

DISTRICT MAGISTRATE OF
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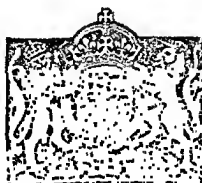
GOVERNMENT OF INDIA
REFORMS OFFICE

THE
UNREPEALED CENTRAL ACTS

WITH
CHRONOLOGICAL TABLE AND INDEX

VOLUME VI

From 1911 to 1916, both inclusive



DELHI: MANAGER OF PUBLICATIONS
1938

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DISTRICT MAGISTRATE OF
ABU.

PREFACE.

The Acts included in this Volume are printed generally as modified up to the 31st December, 1937 ; but the repeals recently effected by the Repealing Act, 1938 (I of 1938), have also been taken into account in preparing the text as well as the Chronological Table.

K. SUNDARAM, I.C.S.,

*Officer on Special Duty, Reforms Office,
Government of India.*

NEW DELHI ;
1st April, 1938.

LIST OF ABBREVIATIONS USED.

A. O.	for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.
B. & O.	Bihar and Orissa.
Ben.	Bengal.
Bom.	Bombay
Brit. Enact., I. S.	British Enactments in force in Indian States
Ch.	Chapter.
Cl.	Clause.
Coll. Stat. Ind.	Collection of Statutes relating to India.
C. P.	Central Provinces.
E. B. & A.	Eastern Bengal and Assam.
Gen. R. & O.	General Statutory Rules and Orders.
G. G. in C.	Governor General in Council
G. G. of India in C.	Governor General of India in Council
G. in C.	Governor in Council
G. of I.	Government of India
Govt.	Government
Ins.	Inserted
L. G.	Local Government.
Mad.	Madras
N.-W. F. P.	North-West Frontier Province.
Pt.	Part
R. and O.	Rules and Orders
Reg.	Regulation
Rep.	Repealed
S.	Section.
Sch.	Schedule
Subs.	Substituted.
U. P.	United Provinces.

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CORRIGENDA

- Page 15. In line 24, for "amendment" read "amendments"
Page 51: In line 8, for "question" read "questions"
Page 245. In line 32, after "association" insert "shall"
Page 250. In line 20, for "affected" read "effected"
Page 290. In line 26, for "of" read "or"
Page 303. In line 35, for "resolution" read "resolutions"
Page 305. In line 28, for "on" read "an"
Page 334: In line 10, for "remunerations" read "remuneration"
Page 345. In line 31, for the last "the" read "this"
Page 349. In line 18, after "Court" insert "or"
Page 352: In line 12, for the second "of" read "or"
Page 386. In line 30, after "standing to" insert "the"
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¹ For Proceedings in Council, see Gazette of India, 1911, Part VI, p 35

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79 Saving for prerogative

80 & 81 [Repealed]

THE SCHEDULE—FEES

ACT No II OF 1911¹

[1st March 1911]

An Act to amend the law relating to the protection of Inventions and Designs

WHEREAS it is expedient to amend the law relating to the protection of inventions and designs, It is hereby enacted as follows —

PRELIMINARY

1. (1) This Act may be called the Indian Patents and Designs Act 1911

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas and

(3) It shall come into force on the first day of January, 1912

2 In this Act, unless there is anything repugnant in the subject or context —

²[(1) " Advocate General " means an Advocate General appointed under the Government of India Act, 1935]

(2) " article " means (as respects designs) any article of manufacture and any substance, artificial or natural or partly artificial and partly natural

(3) " Controller " means the Controller of Patents and Designs appointed under this Act

Legal Proceedings.

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- 53. Piracy of registered design.
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 - ²[(1) "Advocate General" means an Advocate General appointed under the Government of India Act, 1935]
 - (2) "article" means (as respects designs) any article of manufacture and any substance, artificial or natural or partly artificial and partly natural
 - (3) "Controller" means the Controller of Patents and Designs appointed under this Act

Short title
extent and
commence-
ment

Definition

¹ For Statement of Objects and Reasons, see Gazette of India 1910, Pt V, p 92 for Report of Select Committee see *ibid*, 1911, Pt V, p 1 and for Proceedings in Council, see *ibid*, 1910, Pt VI, p 337, dated 9th April, 1910, and *ibid*, 1911, Pt VI, pp 31, 45, 179² Subs by the A O for original cl (1)

(Preliminary.)

(4) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered :

¹[(5) "design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye ; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in Section 478, or property mark as defined in section 479 of the Indian Penal Code :] XLY of 18

(6) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 : V of 1908.

(7) "High Court" has the meaning assigned to that expression by the Code of Criminal Procedure, 1898, in reference to proceedings against European V of 1898. British subjects :

(8) "invention" means any manner of new manufacture and includes an improvement and an alleged invention :

(9) "legal representative" means a person who in law represents the estate of a deceased person :

(10) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture :

(11) "patent" means a patent granted under the provisions of this Act :

¹[(12) "patentee" means the person for the time being entered on the register of patents kept under this Act as the grantee or proprietor of the patent :]

(13) "prescribed" includes prescribed by rules under this Act : and

(14) "proprietor of a ²[new or original] design,"—

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed ; and

(b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired ; and

(c) in any other case, means the author of the design ;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 2, for the original clause.

² Subs. by s. 2, *ibid.*, for "new and original".

(Part I — Patents)

PART I

PATENTS

Application for and Grant of Patent

3. (1) An application for a patent may be made by any person whether he is a British subject or not, and whether alone or jointly with any other person

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by a specification and by the prescribed fee

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor

4 (1) The specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed

(2) Where the Controller deems it desirable, he may require that suitable drawings shall be supplied with the specification, or at any time before the acceptance of the application, and such drawings shall be deemed to form part of the specification

(3) The specification must commence with the title, and must end with a distinct statement of the invention claimed

(4) If in any particular case the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification

5. (1) The Controller shall examine every application, and if he considers that—

Proceeding
upon appli-
cation

(a) the nature of the invention is not fairly described, or

(b) the application, specification and drawings have not been prepared in the prescribed manner ¹* * *, or

(c) the title does not sufficiently indicate the subject matter of the invention, or

(d) the statement of claim does not sufficiently define the invention, or

¹ The words 'or relate to more than one invention' rep by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s 3

(Part I.—Patents.)

(e) the invention as described and claimed is *primâ facie* not a new manufacture or improvement, ¹[or

(f) the specification relates to more than one invention,]

he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Controller so directs, bear date as from the time when the requirement is complied with :

¹[Provided that, when a specification comprises more than one invention, the application shall, if the Controller or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh applications; and any such fresh application shall be proceeded with as a substantive application, but the Controller may, in his discretion, direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act, to have been made on the date which it bears in accordance with such direction.]

(2) Where the Controller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the ²[Central Government].

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the ²[Central Government] or any officer by reason of, or in connection with, any such investigation, or any proceeding consequent thereon.

(4) Unless an application is accepted within twelve months from the date of the application, the application shall (except where an appeal has been lodged) become void :

³[Provided that where, before, or within three months after, the expiration of the said period of twelve months, a request is made to the Controller for an extension of time by any period not exceeding three months, the application shall, on payment of the prescribed fee, be continued or revived, as the case may be, during, but not beyond, the period of extension so requested.]

Advertise-
ment on
acceptance
of applica-
tion.

6. On the acceptance of an application the Controller shall give notice thereof to the applicant and shall advertise the acceptance; and the application and specification with the drawings (if any) shall be open to public inspection.

Use of
invention on
acceptance of
application.

7. Where an application for a patent in respect of an invention has been accepted, any use or publication of the invention during the period between the date of application and the date of sealing such patent shall not prejudice the patent to be granted for the invention :

¹ Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 3.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by Act 7 of 1930, s. 3, for the original proviso.

(Part I—Patents)

Provided that an applicant shall not be entitled to institute any proceedings for infringement unless and until a patent for the invention has been granted to him

8. [Inquiry before sealing patent] Rep by the Indian Patents and Designs Amendment Act, 1930 (VII of 1930), s 4

9. (1) Any person may, on payment of the prescribed fee, at any time within ¹[four] months from the date of the advertisement of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds namely —

Opposition
to grant of
patent

- (a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign, or
- (b) that the invention has been claimed in any specification filed in British India which is or will be of prior date to the patent, the grant of which is opposed, or
- (c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specification, or
- (d) that the invention has been publicly used in any part of British India or has been made publicly known in any part of British India,

but on no other ground

(2) Where such notice is given, the Controller shall give notice of the opposition to the applicant, and shall on the expiration of those ²[four] months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case

(3) The decision of the Controller shall be subject to appeal to the ³[Central Government]

10. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted, subject to such conditions (if any) as the ³[Central Government] thinks expedient, to the applicant, or in the case of a joint application to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the Patent Office

Grant and
sealing of
patent

⁴[(1A) Notwithstanding anything contained in sub section (1), where—

- (a) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or

¹ Subs by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s 5, for “three

² Subs by the Repealing and Amending Act, 1937 (20 of 1937) s 2 and Sch I, for “three

³ Subs by the A O for G G in C

⁴ Ins by Act 7 of 1930 s 6

(Part I.—Patents.)

(b) disputes arise between joint applicants as to proceeding with an application,

the Controller, if he is satisfied of the existence of such agreement or, in any other case, that any joint applicant or applicants ought to be allowed to proceed alone, may direct that such other party or joint applicant or applicants may proceed with the application accordingly and may grant a patent to him or them, as the case may be :

Provided that—

- (i) the Controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and
- (ii) an appeal from any such direction shall lie to the ¹[Central Government].]

(2) A patent shall be sealed as soon as may be, and not after the expiration of eighteen months from the date of application :

Provided that,—

- (a) where the Controller has allowed an extension of the time within which an application may be accepted, a further extension of four months after the said eighteen months shall be allowed for the sealing of the patent ;
- (b) where the sealing is delayed by an appeal to the ¹[Central Government] ²* * * * or by opposition to the grant of the patent, the patent may be sealed at such time as the Controller may direct ;
- (c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death ;
- (d) where ³[for any reason] a patent cannot be sealed within the period allowed by ⁴[any of the foregoing provisions of] this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended ⁵[to the extent applied for but not exceeding three months.]

11. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application :

Provided that no proceedings shall be taken in respect of an infringement committed before the ⁶[advertisement of the acceptance of the application].

¹ Subs. by the A. O. for " G. G. in C. "

² The words " or by a reference under section 8 " rep. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 6.

³ Subs. by s. 6, *ibid.*, for " in consequence of the neglect or failure of the applicant to pay any fee ".

⁴ Ins. by s. 6, *ibid.*

⁵ Subs. by s. 6, *ibid.*, for " to such an extent as may be prescribed ".

⁶ Subs. by s. 7, *ibid.*, for " publication of the specification ".

(Part I — Patents)

12. (1) A patent sealed with the seal of the Patent Office shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout British India and of authorizing others so to do Effect, extent and form of patent

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim, and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention

13. (1) A patent granted to the true and first inventor or his legal representative or assign shall not be invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection Fraudulent applications for patents

¹[(2) Where a patent has been revoked by the High Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Controller under section 9 on the ground stated in clause (a) of sub section (1) of that section, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it had been granted]

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted]

Term of Patent

14. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be ²[sixteen] years from its date Term of Patent

³[(1A) Any patent the original term of which had not expired on or before the 1st day of July, 1930, shall have effect as if the term mentioned therein was sixteen years instead of fourteen years, and any license existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires]

(1B) Where any party to a contract with the patentee or any other person entered into before the 1st day of January, 1930, is subjected to loss or liability by reason of the extension of the term of any patent under this section,

¹ Subs by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s 8, for the original sub section

² Subs by s 9, *ibid*, for "fourteen"

³ Ins by s 9, *ibid*

(Part I.—Patents.)

any District Court having jurisdiction may determine in what manner and by which parties such loss or liability shall be borne.]

(2) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times :

¹[Provided that where the patentee, before, or within three months after, the expiration of the time for payment, applies to the Controller for an extension of time by any period not exceeding three months, the patent shall, on payment of such additional fee as may be prescribed, be continued or revived, as the case may be, during, but not beyond, the period of extension applied for.]

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

Extension of
term of
patent.

15. (1) A patentee may ²* * * present a petition to the ³[Central Government] praying that his patent may be extended for a further term ; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee ⁴[and must be advertised by the patentee within the prescribed time and in the prescribed manner.]

(2) Any person may ⁴[within such time as may be prescribed and on payment of the prescribed fee] give notice to the Controller of objection to the extension.

(3) Where a petition is presented under sub-section (1), the ³[Central Government] may, as ⁵[it] thinks fit, dispose of the petition ⁶[itself] or refer it to a High Court for decision.

(4) If the petition be referred to a High Court, then on the hearing of such petition under this section, the patentee, and any person who has given notice under sub-section (2) of objection, shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

(5) The Court to which the petition is referred shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(6) If it appears to the ³[Central Government] or to the High Court when the petition has been referred to it, that the patentee has been inadequately remunerated by his patent, the ³[Central Government] or the High Court, as the case may be, may by order extend the term of the patent for a further

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 9, for the original proviso.

² The words " after advertising in the prescribed manner his intention to do so " rep. by s. 10, *ibid.*

³ Subs. by the A. O. for " G. G. in C."

⁴ Ins. by Act 7 of 1930, s. 10.

⁵ Subs. by the A. O. for " he ".

⁶ Subs. by the A. O. for " himself ".

(Part I—Patents)

term not exceeding ¹[five] or, in exceptional cases, ²[ten] years, or may order the grant of a new patent for such term as may be specified in the order and subject to the payment of such fees as may be prescribed and containing any restriction, conditions and provisions which the ³[Central Government] or the High Court, as the case may be, may think fit

Provided that any patent so extended or granted shall notwithstanding anything therein, or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee

⁴[15A. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and, if he does so, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid

Patents of addition

(2) Save as otherwise expressly provided by this Act, a patent of addition shall remain in force as long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders, become an independent patent and the fees payable and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent]

16. (1) Where any patent has ceased owing to the failure of the patentee to pay any prescribed fee within the prescribed time the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent

Restoration of lapsed patent

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office

¹ Subs by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s 10 for "seven

² Subs by s 10, *ibid*, for fourteen

³ Subs by the A O for "G G in C

⁴ Ins by Act 7 of 1930 s 11

(Part I.—Patents.)

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Controller shall hear the case and, subject to an appeal to the ¹[Central Government] issue an order either restoring the patent subject to any conditions ²[and restrictions] deemed to be advisable or dismissing the application :

Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased.

Amendment of Application or Specification.

Amendment
of applica-
tion or
specification
by Controller.

17. (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof, by way of disclaimer, correction or explanation, stating the nature of, and the reasons for, the proposed amendment.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such a notice is given the Controller shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(5) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) The decision of the Controller in either case shall be subject to an appeal to the ¹[Central Government.]

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before amendment.

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud ; and the amendment shall be advertised in the prescribed manner, and shall in all Courts and for all purposes be deemed to form part of the application or specification.

¹ Subs. by the A. O. for " G. G. in C."

² Ins. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 2 and Sch. I.

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(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending

18 In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent the Court may by order allow the patentee to amend his specification by way of disclaimer ^{Amendment of specification by the Court} ¹[correction or explanation] in such manner, and subject to such terms as to costs, advertisement or other wise, as the Court may think fit

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard

19. Where an amendment of a specification by way of disclaimer ^{Restriction on recovery of damages} ²correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention ³[before the date of the decision allowing the amendment] unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge

Register of Patents

20. (1) There shall be kept at the Patent Office a book called the Register ^{Register of Patents} of Patents, wherein shall be entered the names and addresses of grantees of Patents, notifications of assignments and of transmissions of patents of licenses under patents, and of amendment, extensions, and revocations of patents and such other matters affecting the validity or proprietorship of patents as may be prescribed

(2) The register of inventions and address book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein

(4) Copies of deeds, licenses and any other documents affecting the proprietorship in any patent or in any license thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office ³* * * *

¹ Ins by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930) s 12

² Subs by s 13 *ibid* for before the disclaimer correction or explanation

³ The words and unless such copies have been so supplied such deeds licenses or other documents shall not be received as evidence of any transaction affecting a patent rep by s 14 *ibid*

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Crown.

Patent to
bind Crown.

¹[21. (1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against His Majesty the King as it has against a subject.

(2) The officers or authorities administering any department of the service of His Majesty may, by themselves or by such of their agents, contractors or others as may be authorised in writing by them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the ²[Central Government], between such officers or authorities and the applicant or patentee, or, in default of agreement, as may be settled in the manner hereinafter provided. And the terms of any agreement or license concluded between the applicant or patentee and any person other than such officers or authorities, shall be inoperative so far as concerns the making, use or exercise of the invention for the service of the Crown.

(3) Where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, the officers or authorities administering any department of the service of His Majesty (such invention not having been communicated directly or indirectly by the applicant or patentee), such officers or authorities, or such of their agents, contractors, or others, as may be authorised in writing by them, may, after giving notice to the applicant or patentee, make, use or exercise the invention so recorded or tried for the service of the Crown, free of any royalty or other payment to the applicant or patentee, notwithstanding the existence of the patent. If, in the opinion of such officers or authorities, the disclosure to the applicant or patentee, as the case may be, of the document recording the invention, or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

(4) In the event of any dispute as to the making, use or exercise of an invention under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the High Court for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct. The Court, referee or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, referee, or arbitrator; further, in settling the terms as aforesaid, shall be entitled to take into consi-

¹ Ss 21 and 21A were substituted by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 15, for the original s. 21.

² Subs. by the A. O. for "G. G. in C."

(Part I—Patents)

deration any benefit or compensation which the applicant or patentee or any other person interested in the patent, may have received directly or indirectly from the Crown or from such officers or authorities in respect of such patent

Provided that, if the inventor or patentee is a Government servant and the subject matter of the invention is certified by the ¹[Central Government] or ²[Provincial Government] to be connected with work done in the course of such service any such dispute shall be settled by the ¹[Central Government] after hearing the applicant or patentee and any other person having an interest in the invention or patent

(5) The right to use an invention for the services of the Crown under the provisions of this section or any provisions for which this section is substituted shall include, and shall be deemed always to have included the power to sell any articles made in pursuance of such right which are no longer required for the services of the Crown

(6) Nothing in this section shall affect the right of the Crown or of any person deriving title directly or indirectly from the Crown to sell or use any articles forfeited under any law for the time being in force relating to customs or excise

21A (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the ⁴[Central Government] on behalf of His Majesty all the benefit of the invention and of any patent obtained or to be obtained for the invention, and the ⁴[Central Government] may be a party to the assignment

Assignment
of patent
to the
Central
Government

(2) The assignment shall effectually vest the benefit of the invention and patent in the ⁴[Central Government] on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration) and may be enforced accordingly by or on behalf of the ⁴[Central Government]

(3) Where any such assignment has been made, the ¹[Central Government] may, at any time before the publication of the specification, certify to the Controller that, in the interest of the public service the particulars of the invention and of the manner in which it is to be performed should be kept secret

(4) If the ¹[Central Government] so certify, the application and specifications with the drawings (if any) and any amendment of the specification and any copies of such documents and drawings, shall instead of being left in the ordinary manner at the Patent Office, be delivered to the Controller in a packet sealed by authority of the ¹[Central Government]

¹ Subs by the A O for G G in C

² Subs by the A O for L G

³ See foot note 1 on preceding page

⁴ Subs by the A O for Secretary of State for India in Council

(Part I.—Patents.)

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Controller, and shall not be opened save under the authority of an order of the ¹[Central Government].

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the ¹[Central Government] to receive it, and shall, if returned to the Controller, be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the ¹[Central Government].

(8) Where the ¹[Central Government] certifies as aforesaid after an application for a patent has been left at the Patent Office but before the publication of the specification, the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Controller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the ¹[Central Government].

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the ¹[Central Government] as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The ¹[Central Government] may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State for India in Council or the ¹[Central Government] or to any person or persons authorised by the Secretary of State for India in Council or the ¹[Central Government] to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.]

Compulsory Licenses and Revocation.

22. (1) Any person interested may present a petition to the ¹[Central Government] which shall be left at the Patent Office, together with the prescribed fee, alleging that ²[the demand for a patented article in British India is not being met to an adequate extent and on reasonable terms] and praying

¹ Subs. by the A. O. for " G. G. in C."

² Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 16, for " the reasonable requirements of the public with respect to a patented invention have not been satisfied ".

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for the grant of a compulsory license, or, in the alternative, for the revocation of the patent

(2) The ¹[Central Government] shall consider the petition and if the parties do not come to an arrangement between themselves the ¹[Central Government] may, as ²[it] thinks fit either dispose of the petition ³[itself] or refer it to a High Court for decision

(3) The provisions of sub section (4) of section 15 prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section

(4) If the ¹[Central Government] is of opinion or where a reference has been made under sub section (2) to a High Court, that Court finds that ⁴[the demand for the patented article in British India is not being met to an adequate extent and on reasonable terms] the patentee may be ordered to grant licenses on such terms as the ¹[Central Government] or the High Court as the case may be may think just or, if the ¹[Central Government] or the High Court is of opinion that ⁵[the demand will not be adequately met] by the grant of licenses the patent may be revoked by order of the ¹[Central Government] or the High Court

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent or if the patentee gives satisfactory reasons for his default

(5) For the purposes of this section ⁶[the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms]—

- (a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article or any parts thereof which are necessary for its efficient working or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms any existing trade or industry or the establishment of any new trade or industry in British India is unfairly prejudiced ⁷* * * * or,
- (b) if any trade or industry in British India is unfairly prejudiced by the conditions attached by the patentee ⁸* * * to the purchase, hire or use of the patented article or to the using or working of the patented process

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¹ Subs by the A O for G G in C

² Subs by the A O for he

³ Subs by the A O for himself

⁴ Subs by the Indian Patents and Designs (Amendment) Act 1930 (7 of 1930) s 16 for the reasonable requirements of the public with reference to the patented invention have not been satisfied

⁵ Subs by s 16 *ibid* for the reasonable requirements of the public will not be satisfied

⁶ Subs by s 16 *ibid* for the reasonable requirements of the public shall not be deemed

⁷ ⁸

(Part I.—Patents.)

Revocation
of patents
worked
outside
British India.

23. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the ¹[Central Government] ²[for relief under this section] on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside British India.

(2) The ¹[Central Government] shall consider the application, and, if after inquiry ³[it] is satisfied—

(a) that the allegations contained therein are correct; and

(b) that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in British India; and

(c) that the patentee refuses to grant a license on reasonable terms,

then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in British India, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the ¹[Central Government] may make an order—

⁴[(a)] revoking the patent either—

(i) forthwith; or

(ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to ⁵[its] satisfaction that the patented article or process is manufactured or carried on within British India to an adequate extent; ⁴[or

(b) ordering the patentee to grant a license to the applicant which may be a license exclusive to him or otherwise as the ¹[Central Government] may direct.]

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with any foreign country or British possession.

(4) The ¹[Central Government] may, on the application of the patentee, extend the time limited in any order made under sub-section (2), clause (ii), for such period not exceeding two years as ³[it] may specify in a subsequent order, or revoke any order made under sub-section (2), clause (ii), or any subsequent order if sufficient cause is in ⁵[its] opinion shown by the patentee.

Operation of
order under
section 22 or
section 23.

23A. An order of the High Court under section 22 or of the ¹[Central Government] under section 22 or section 23, directing the grant of any license

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 17, for "for the revocation of the patent".

³ Subs. by the A. O. for "he".

⁴ Ins. by Act 7 of 1930, s. 17.

⁵ Subs. by the A. O. for "his".

⁶ Ins. by Act 7 of 1930, s. 18.

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shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and executed by the patentee and all other necessary parties]

24. A patentee may at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer and thereupon make an order for the revocation of the patent

Power of
Controller to
revoke
surrendered
patent

25. A patent shall be deemed to be revoked if the ¹[Central Government] declares, by notification in the ²[Official Gazette] the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public

Revocation
of patent
on public
grounds

Legal Proceedings

26. (1) Revocation of a patent in whole or in part may be obtained on petition to a High Court on all or any of the following grounds, namely —

Petition for
revocation
of patent

- (a) that any invention included in the statement of claim is of no utility,
- (b) that any invention included in the statement of claim was not, at the date of the application for a patent, a new invention within the meaning of this Act,
- (c) that the applicant was not the true and first inventor thereof or the assign or legal representative of such inventor thereof,
- (d) that the original or any amended application or specification does not fulfil the requirements of this Act,
- (e) that the applicant has knowingly or fraudulently included in the application for a patent or in the original or any amended specification as his invention something which was not new or whereof he was neither the inventor nor the assign nor the legal representative of such inventor,
- (f) that the original or any subsequent application relating to the invention or the original or any amended specification, contains a wilful or fraudulent misstatement,
- (g) that ³[the whole or a part] of the invention or the manner in which ³[the whole or a part] is to be made and used as described in the original or any amended specification, is not thereby sufficiently described, and that this insufficiency was fraudulent or is injurious to the public

(2) A petition for revocation of a patent may be presented—

- (a) by the Advocate General or any person authorized by him, or

¹ Subs by the A O for G G in C

² Subs by the A O for Gazette of India

³ Subs by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930) s 19 for
“a part

(Part I.—Patents.)

(b) by any person alleging—

- (i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims ; or
- (ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee ; or
- (iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within British India, before the date of the patent, anything claimed by the patentee as his invention.

(3) The High Court may, irrespective of any provisions of the Code of Civil Procedure, 1908, in this behalf, require any person, other than the Advocate General or any person authorized by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

Notice of
proceedings
to persons
interested.

27. (1) Notice of any petition for revocation of a patent under section 26 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register.

Framing
issue for
trial before
other Courts.

28. (1) A High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question arising upon a petition to itself under section 26, and the issue shall be tried accordingly.

(2) If the issue is directed to another High Court, the finding shall be certified by that Court to the High Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court directing the issue, and the High Court may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Suits for
infringement
of patents.

29. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his license, or counterfeits it, or imitates it.

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(2) Every ground on which a patent may be revoked under this Act shall be available by way of defence to a suit for infringement

30. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent

Exemption of innocent infringer from liability for damages

Provided that nothing in this section shall affect any proceedings for an injunction

31. In a suit for infringement of a patent, the Court may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit

Order for inspection etc., in suit

32. In a suit for infringement of a patent the Court may certify that the validity of the patent came in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred

Certificate of validity questioned and costs thereon

33. A Court making a decree in a suit under section 29 or an order on a petition under section 26 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the register of patents

Transmission of decrees and orders to the Controller

34. A High Court to which a petition has been presented under section 26 may stay proceedings on or dismiss the petition if in its opinion the petition would be disposed of more justly or conveniently by another High Court

Power of High Court to stay proceedings, etc

35. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of ¹[all] the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance

Hearing with assessor

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid

(3) The remuneration, if any to be paid to an assessor under this section shall in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act

²[35A. Notwithstanding anything contained in section 19, if the Court in any action for infringement of a patent finds that any one or more of the

Grant of relief in respect of

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 20, for "either of"

² Ins. by s. 21, *ibid*

(Part I.—Patents.)

particular
claims.

claims in the specification in respect of which the infringement is alleged are valid, it may, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.]

Remedy in
case of
groundless
threats of
legal pro-
ceedings.

36. Where any person claiming ¹[to have an interest in a patent] by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of ²[the patent]:

³[Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.]

Miscellaneous.

Grant of
'nts to
, or more
sons.

37. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

Novelty of
invention.

38. (1) An invention shall be deemed a new invention within the meaning of this Act—

- (a) if it has not, before the date of the application for a patent thereon, been publicly used in any part of British India, or been made publicly known in any part of British India, and
- (b) if the inventor has not by secret or experimental user made direct or indirect profits from his invention in excess of such an amount as the Court or the ⁴[Central Government], as the case may be, may, in consideration of all the circumstances of the case, deem reasonable.

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 22 for "to be the patentee of an invention".

² Subs. by s. 22, *ibid.*, for "any legal rights of the person making such threats".

³ Subs. by s. 22, *ibid.*, for "original proviso".

⁴ Subs. by the A. O. for "G. G. in C."

(Part I—Patents)

(2) The public use or knowledge of an invention before the date of the application for a patent thereon shall not be deemed a public use or knowledge within the meaning of this Act if the knowledge has been obtained surreptitiously or in fraud of the true and first inventor or has been communicated to the public in fraud of such inventor or in breach of confidence.

Provided that such inventor has not acquiesced in the public use of his invention, and that within six months after the commencement of that use he applies for a patent

39. If a patent is lost or destroyed or its non production is accounted for to the satisfaction of the Controller the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof

40 (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the [Central Government] or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application

Provided that—

- (a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so and
- (b) the application for a patent is made before or within six months from the date of the opening of the exhibition

(2) The ¹[Central Government] may, by notification in the ²[Official Gazette] apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the ⁴[Central Government] and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification

41. The trustees of the Indian Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by the [Central Government]

³⁴² (I) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in British

¹ Subs by the A O for G O in C

(Part II.—Designs.)

be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the ¹[Central Government] by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the ¹[Central Government] may, if ²[it] thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as ²[it] thinks fit.

Effect of
disclosure
on copyright.

49. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of
registered
designs.

50. (1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorized by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

Information
as to existence
of copyright.

51. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "he".

(Part II—Designs)

fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor

¹[51A. (1) Any person interested may present a petition for the cancellation of the registration of a design—

Cancellation
of registra-
tion

(a) at any time after the registration of the design, to the High Court on any of the following grounds, namely —

(i) that the design has been previously registered in British India, or

(ii) that it has been published in British India prior to the date of registration, or

(iii) that the design is not a new or original design, or

(b) within one year from the date of the registration, to the Controller on either of the grounds specified in sub clauses (i) and (ii) of clause (a)

(2) An appeal shall lie from any order of the Controller under this section to the High Court and the Controller may at any time refer any such petition to the High Court and the High Court shall decide any petition so referred

51B. The provisions of section 21 shall apply to registered designs as if those provisions were re enacted herein and in terms made applicable to registered designs]

Registration
of designs to
bind the
Crown

Industrial and International Exhibitions

52. (1) The exhibition at an industrial or international exhibition certified as such by the ²[Central Government], or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof

Provisions
as to exhibi-
tions

Provided that—

(a) the exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Controller the prescribed notice of his intention to do so, and

(b) the application for registration is made before or within six months from the date of the opening of the exhibition

(2) The ²[Central Government] may, by notification in the ³[Official Gazette], apply this section to any exhibition mentioned in the notification

¹ Ss 51A and 51B ins by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930) s 24

² Subs by the A O for "G G in C"

³ Subs by the A O for "Gazette of India".

(Part II.—Designs.)

in like manner as if it were an industrial or international exhibition certified as such by the ¹[Central Government], and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

Legal Proceedings.

Piracy of
registered
design.

53. (1) During the existence of copyright in any design it shall not be lawful for any person—

- (a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied ; or,
- (b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention—

- (a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or
- (b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly :

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

Application
of certain
provisions of
the Act as to
patents to
designs.

54. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

¹ Subs. by the A. O. for "G. G. in C."

(Part III—General)

PART III

GENERAL

Patent Office and Proceedings thereat

55. (1) The ¹[Central Government] may provide for the purposes of this Patent Act, an office which shall be called, and is in this Act referred to as, the Patent Office

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs, who shall act under the superintendence and direction of the ¹[Central Government]

(3) There shall be a seal for the Patent Office

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the ¹[Central Government]

56 The ¹[Central Government] may appoint the Controller, and so many Officers and clerks officers and clerks, with such designations and duties, as ²[it] thinks fit

Fees

57. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to the patents and designs under this Act, such fees as may be prescribed by the ¹[Central Government] so however that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid

Provisions as to Registers and other Documents in the Patent Office

58. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive

Notice of trust not to be entered in registers

59. Every register kept under this Act shall at all convenient times be open to the inspection of the public subject to the provisions of this Act, and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee

Inspection of and extracts from registers

60. Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection

Privilege of reports of Controller

61. (1) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any), accompanying or left in connection with such application, shall not, save as otherwise expressly

Prohibition of publication of specifications and drawings,

¹ Subs by the A O for G G m C

² Subs by the A O for he

(Part III.—General.)

etc.,
where appli-
cation aban-
doned, etc.

provided by this Act, at any time be open to public inspection or be published by the Controller.

(2) Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

Power for
Controller to
correct
clerical errors.

62. The Controller may, on request in writing accompanied by the prescribed fee,—

(a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification;

1: * * * *

(c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of
assignments
and trans-
missions in
registers.

63. ²[(1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.]

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, license or dealing :

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other moveable property.

³[(4) Except in the case of an application made under section 64, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall

¹ Cl. (b) rep. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 25.

² Subs. by s. 26, *ibid.*, for original sub-sections (1) and (2).

³ Ins. by s. 26, *ibid.*

(Part III —General)

not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs]

64. (1) ¹[The Controller] may, on the application in the prescribed manner ^{Rectification of register.} of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging or varying such entry ²[as he thinks fit and rectify the register accordingly]

(2) The ³[Controller] may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register

⁴[(3) An appeal shall lie to the High Court from any order of the Controller under this section, and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred]

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly

⁵[(5) Nothing in this section shall be deemed to empower the Controller—

(a) to rectify the register of patents, or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(b) to make any such order cancelling the registration of a design as is provided for in section 51A]

Powers and Duties of Controller

65. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and awarding costs ^{Powers of Controller in proceedings under Act.}

66. The Controller shall issue periodically a publication of patented inventions containing such information as the ⁶[Central Government] may direct ^{Publication of patented inventions.}

¹ Subs by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s 27, for "A High Court"

² Subs by s 27, *ibid* for 'as it may think fit'

³ Subs by s 27, *ibid* for "Court"

⁴ Subs by s 27, *ibid* for original sub section (3)

⁵ Subs by s 27, *ibid* for original sub section (3)

⁶ Subs by the A O for 'G G in C'

(Part III.—General.)

Exercise of discretionary power by Controller.

67. Where any discretionary power is by or under this Act given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application or of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of Controller to take directions of the Central Government.

68. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the ¹[Central Government] for directions in the matter.

Refusal to grant patent, etc., in certain cases.

69. ²[(1)] The Controller may refuse to grant a patent for an invention or to register a design, of which the use would, in his opinion, be contrary to law or morality.

³[(2)] An appeal shall lie to the ¹[Central Government] from an order of the Controller under this section.]

Appeals to the Central Government.

70. (1) Where an appeal is declared by this Act to lie from the Controller to the ¹[Central Government], the appeal shall be made within ⁴[three] months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of ⁴[three] months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The ¹[Central Government] may, if ⁵[it] thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the ¹[Central Government] shall be final.

Evidence, etc.

Certificate of Controller to be evidence.

71. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Transmission of certified printed copies of specifications, etc.

72. Copies of all specifications, drawings and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted as soon as may be, after they have been accepted or allowed at the Patent Office, to ⁶[the Provincial Governments of Madras and Bombay] and to such other authorities as the ¹[Central Government] may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities.

¹Subs. by the A. O. for "G. G. in C."

²The original s. 69 was re-numbered as sub-section (1) of that section by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 28.

³Sub-section (2) ins. by s. 28, *ibid.*

⁴Subs. by s. 29, *ibid.* for "two".

⁵Subs. by the A. O. for "he".

⁶Subs. by the A. O. for "the Governor of Fort St. George in Council, the Governor of Bombay in Council, the Lieutenant Governor of Burma".

(Part III—General)

73. Any application, notice or other document authorized or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post Applications and notices by post.

74. (1) If any person is, by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability. Declaration by infant, lunatic, etc.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing

¹[74A. Where a person giving notice of any opposition under this Act or giving notice to the Court of appeal from any decision of the Controller under this Act, neither resides nor carries on business in British India, the Controller or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and, in default of such security being given, may disallow the opposition or dismiss the appeal] Security for costs

Agency

75. The following documents, namely,—

- (1) applications for a patent,
- (2) notices of opposition,
- (3) applications for extension of term of a patent,
- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory license or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices

Provided that, if such person is absent from British India, they may be signed and verified on his behalf by an agent resident in British India authorized by him in writing in that behalf

Subscription and verification of certain documents.

¹ Ins by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s 30
c 2

(Part III.—General.)

Agency.

76. (1) All other applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent authorised to the satisfaction of the Controller.

(2) The Controller may, if he sees fit, require—

- (a) any such agent to be resident in British India ;
- (b) any person not residing in British India to employ an agent residing in British India ;
- (c) the personal signature or presence of any applicant, opponent or other person.

Powers, etc. of ¹[Central Government].

Power for
Central
Government
to make
rules.

77. (1) The ¹[Central Government] may make such rules² as ³[it] thinks expedient subject to the provisions of this Act—

- (a) for regulating the practice of registration under this Act ;
- (b) for classifying goods for the purposes of designs ;
- (c) for making or requiring duplicates of specifications, drawings and other documents ;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the ¹[Central Government] thinks fit, of specifications, drawings and other documents ;
- (e) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office ; and providing for the inspection of indexes and abridgments and other documents ;
- ⁴[(ee) for the manner in which fees leviable under this Act may be paid ;
- (eee) for ensuring secrecy with respect to patents to which section 21A applies ;]

¹ Subs. by the A. O. for "G. G. in C."

²For the Indian Patents and Designs Rules, 1933, see Gazette of India, Pt. II, dated 11th February, 1933.

³Subs. by the A. O. for "he".

⁴Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 31..

(Part III—General)

(f) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller, and all things by this Act placed under the direction or control of the Controller or of the ¹[Central Government], and

(g) generally for the purpose of carrying into effect the provisions of this Act

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication

²[(2A) Nothing in sub section (2) shall apply in the case of rules made for the purpose specified in clause (eee) of sub-section (1), and any such rules may modify any of the provisions of this Act so far as may be necessary for that purpose]

(3) All rules made under this section shall be published in the ³[Official Gazette], and on such publication shall have effect as if enacted in this Act

Offences

78. If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with or is the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor

Wrongful use of words 'Patent Office'

⁴[Reciprocal arrangements with the United Kingdom and other parts of His Majesty's dominions]

78A. (1) If His Majesty is pleased by Order in Council to apply such of the provisions of section 91 of the Patents and Designs Act, 1907, as relate to inventions or designs, to British India, then any person who has applied for protection for any invention or design in the United Kingdom, ⁵[or his legal representative or assignee] shall be entitled to a patent for his invention or to registration of his design under this Act, in priority to other applicants, and the patent or registration shall have the same date as the date of the application in the United Kingdom

Reciprocal arrangements with the United Kingdom and other parts of His Majesty's dominions

Provided that—

(a) the application is made in the case of a patent within twelve months, and, in the case of a design, within ⁶[six] months from the application for protection in the United Kingdom and

¹Subs by the A O for "G O in C"

²Ins by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s 31

³Subs by the A O for Gazette of India

n Patents and Designs (Amendment) Act,

(Part III.—General.)

(b) nothing in this section shall entitle the patentee or the proprietor of the design to recover damages for infringements happening prior to the actual date on which, in the case of a patent, his application is accepted, or, in the case of a design, the design is registered, in British India.

(2) The patent granted for an invention or the registration of a design shall not be invalidated—

(a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention, or

(b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design,

in British India during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent or the registration of a design under this section must be made in the same manner as an ordinary application under this Act:

Provided that, in the case of a patent, if the application is not accepted within twelve months from the date of the application for protection in the United Kingdom, the specification and the drawings (if any) supplied therewith shall be open to public inspection at the expiration of that period.

(4) Where it is made to appear to the ¹[Central Government] that the legislature of any other part of His Majesty's dominions ²[or of any State in India] has made satisfactory provision for the protection of inventions or designs, patented or registered in British India, the ¹[Central Government] may, by notification³ in the ⁴[Official Gazette], direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of inventions or designs patented or registered in that part of His Majesty's dominions ²[or in that State, as the case may be.]

Savings and Repeal.

Savings for
prerogative.

79. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

80. [Repeal.] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

81. [Substitution of patents for rights under repealed Act.] *Rep. by the Repealing and Amending Act, 1920 (XXXI of 1920), s. 3 and Sch. II.*

¹ Subs. by the A. O. for "G. G. in C."

² Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 32.

³ For such notifications, see Gen. R. and O., Vol. IV, pp. 117-119.

⁴ Subs. by the A. O. for "Gazette of India".

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¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 33, for "50".

² Subs. by s. 33, *ibid.* for the original entries.

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(Chapter I.—Preliminary.)

ACT NO. VIII OF 1911.¹

[16th March, 1911.]

An Act to consolidate and amend the law relating to the government of His Majesty's² Indian Forces.

WHEREAS it is expedient to consolidate and amend the law relating to the government of the ³[Indian commissioned officers, Viceroy's commissioned officers], soldiers and other persons in His Majesty's Indian Forces ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title
and com-
mencement.

1. (1) This Act may be called the Indian Army Act, 1911.
- (2) It shall come into force on such ⁴date as the ⁵[Central Government] may, by notification in the ⁶[Official Gazette], direct in this behalf.

Application of Act.

Persons
subject to
Act.

2. (1) The following persons shall be subject to this Act, namely :—

(a) ³[Indian commissioned officers, Viceroy's commissioned officers] and warrant officers :

⁷[Provided that a person holding a commission in the Army in India Reserve of Officers shall be so subject only when ordered on any duty or service for which he is liable as a member of such reserve force ;]

(b) persons enrolled under this Act ;

(c) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the ⁵[Central Government] by ⁸notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces :

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¹ For Statement of Objects and Reasons, see Gazette of India, 1910, Pt. V, p. 140 ; for Report of Select Committee, see *ibid.*, 1911, Pt. V, p. 39 ; and for Proceedings in Council, see *ibid.*, 1910, Pt. VI, p. 16, dated 13th August, 1910, and *ibid.*, 1911, Pt. VI, pp. 34, 46 and 362.

This Act has been declared to be in force in the Sonthal Parganas by Notification under the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 ; in British Baluchistan by the British Baluchistan Laws Regulations, 1913 (3 of 1913), s. 3 ; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

² The word "Native" rep. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 26 and Sch.

³ Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 2, for "Indian officers".

⁴ The 1st January, 1912, see Gen. R. & O., Vol. IV, p. 120.

⁵ Subs. by the A. O. for "G. G.-in C."

⁶ Subs. by the A. O. for "Gazette of India".

⁷ Ins. by the Indian Army (Amendment) Act, 1937 (15 of 1937), s. 2.

⁸ For places declared to be frontier posts under ss. 2(1) and 22, see Gen. R. & O., Vol. IV, p. 120.

⁹ Proviso rep. by Act 11 of 1918, s. 26 and Sch.

(Chapter I—Preliminary)

(2) Every person subject to this Act under sub section (1), clause (a) or (b), shall remain so subject until duly ¹[retired, discharged, cashiered, removed, or dismissed from the service]

²[Provided that an officer of the Indian Land Forces retired therefrom and appointed to the Indian Regular Reserve of Officers shall again become so subject when ordered on any duty or service for which he is liable as a member of such reserve force]

3. (1) The ³[Central Government] may, by 'notification, direct that any persons or class of persons subject to this Act under section 2, sub section (1) clause (c), shall be so subject as ⁴[Indian commissioned officers, Viceroy's commissioned officers] warrant officers or non commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction

Special provision as to rank in certain cases

(2) All persons subject to this Act other than officers, warrant officers and non commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub section (1) is in force, be deemed to be of a rank inferior to that of a non commissioned officer

4. Every person subject to this Act under section 2, sub section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the command of the corps department or detachment (if any) to which he is attached, and if he is not attached to any corps department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force

Commanding officer of persons subject to military law under section 2, clause (c)

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed

5. (1) The ³[Central Government] may, by notification, apply all or any of the provisions of this Act to any force raised and maintained in India under the authority of the ³[Central Government]

Powers to apply Act to certain forces under the Central Government

(2) While any of the provisions of this Act apply to any such force, the ³[Central Government] may, by notification, direct by what authority any

¹ Subs by the Indian Army (Amendment) Act, 1934 (33 of 1934) s 3, for 'discharged or dismissed'

² Ins by the Indian Army (Amendment) Act, 1937 (15 of 1937), s 2

³ Subs by the A O for 'G G in C'

⁴ For notification declaring the rank of certain Civil officers when subject to the Act, see Gen R & O, Vol IV, 1 121

⁵ Subs by Act 33 of 1934, s. 2 for "Indian officers"

(Chapter I.—Preliminary.)

jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force.

Officers to exercise powers in certain cases.

6. ¹[(1) Whenever persons subject to this Act are serving—

(a) out of India under an officer not subject to the authority of the ²[Central Government]. or

(b) in India under an officer commanding any military organization not in this section specifically named, and being, in the opinion of the ²[Central Government], not less than a brigade,

the ²[Central Government] may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.]

(2) The ²[Central Government] may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as ³[it] may think fit.

Relations between Indian Forces and Burman Forces when acting together, etc.

⁴6A. [(1) When an officer, warrant officer or non-commissioned officer of His Majesty's Burma Forces is a member of a body of those forces acting with, or is attached to, any body of His Majesty's Indian Forces under such conditions as may be prescribed, then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers he shall in relation to that body of His Majesty's Indian Forces be treated and have all such powers as if he were an officer, warrant officer or non-commissioned officer as the case may be of His Majesty's Indian Forces..

(2) When an officer, warrant officer, non-commissioned officer or soldier of His Majesty's Indian Forces is a member of a body of those forces acting with, or is attached to, any body of His Majesty's Burma Forces under such conditions as may be prescribed, then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers the officers, warrant officers and non-commissioned officers of that body of His Majesty's Burma Forces shall in relation to him be treated and have all such powers as if they were officers, warrant officers or non-commissioned officers of His Majesty's Indian Forces..

(3) In this section "prescribed" means "prescribed by the Central Government and the Governor of Burma", and, for the purposes of this section, the relative rank of officers, warrant officers and non-commissioned officers of His Majesty's Indian Forces and His Majesty's Burma Forces may be determined by regulations made by the Central Government and the Governor of Burma.]

¹ Subs. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 3, for original sub-section (1).

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "he".

⁴ Ins. by the A. O.

(Chapter I—Preliminary)

Definitions

7. In this Act, unless there is something repugnant in the subject or Definitions context,—

¹[(1) “British officer” means a person holding His Majesty’s commission in His Majesty’s Land Forces or in the Royal Marines or in the Territorial Army, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty’s Naval Forces or Royal Air Force]

²[(2) “Indian commissioned officer” means a person commissioned, gazetted or in pay as an officer holding His Majesty’s commission in the Indian Land Forces, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in the Indian Air Force

(2A) ‘Viceroy’s commissioned officer’ means a person commissioned, gazetted or in pay as a Viceroy’s commissioned officer in the Indian Army]

(3) “warrant officer” means a person appointed gazetted or in pay as ³[an Indian] warrant officer in His Majesty’s Indian Forces

(4) “non commissioned officer” means a person attested under this Act holding ³[an Indian] non commissioned rank in His Majesty’s Indian Forces and includes an acting non commissioned officer

⁴[(5) ‘officer’ means an officer of any of His Majesty’s Military Forces and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed an officer of any of His Majesty’s Naval or Air Forces, but does not include a warrant officer petty officer or non commissioned officer]

(6) “commanding officer,” when used in any provision of this Act with reference to any separate portion of His Majesty’s forces or to any department, means the British officer [or Indian commissioned officer] whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision

(7) “superior officer,” when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer, and, as regards persons placed under his orders, “[an officer, warrant officer, petty officer or non-commissioned officer of any of His Majesty’s Naval, Military or Air Forces]

original of (1)

r “a native”

1911 by 8 10 1000

* Subs¹ by s 5 *ibid*, for “a warrant officer or non commissioned officer subject to the Army Act or the Air Force Act”

(Chapter I.—Preliminary.)

¹[(8) “army,” “army corps,” “division,” and “brigade” mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the ²[Central Government] or, when on active service, an army, army corps, division or brigade under the command of an officer holding a commission in His Majesty’s Land Forces ³[or His Majesty’s Indian Forces] :]

(9) “corps” means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act :

(10) “independent brigade” means a brigade which does not form part of a division :

(11) “department” includes any division or branch of a department :

(12) “enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act :

(13) “active service,” as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

(14) “military custody” means the arrest or confinement of a person according to the usages of the service ³[and includes air force custody] :

(15) “military reward” includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward :

(16) “court-martial” means a court-martial held under this Act :

(17) “criminal court” means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the ²[Central Government or the Crown Representative] :

(18) “civil offence” means an offence which, if committed in British India, would be triable by a criminal court :

(19) “offence” means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined :

(20) “notification” means a notification published in the ⁴[Official Gazette] :

(21) “prescribed” means prescribed by rules made under this Act : and

(22) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.

¹ Subs. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 4, for the original clause.

² Subs. by the A. O. for “G. G. in C.”

³ Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 5.

⁴ Subs. by the A. O. for “Gazette of India”.

(Chapter II — Enrolment and Attestation)

CHAPTER II

ENROLMENT AND ATTESTATION

Enrolment.

8. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled, and shall put to him the question set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question

Procedure
before
enrolling
officer

9. If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign ¹[and shall also cause the person to sign] the enrolment paper, and the person shall then be deemed to be enrolled

Enrolment

10. Every person who has for the space of six months been in the receipt of military pay ²[as an enrolled person] and been borne on the rolls of any corps or department ³* * * shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment

Presumption
of enrolment
in certain
cases

Attestation

11. The following persons shall be attested, namely —

- (a) all persons enrolled as combatants,
- (b) all other enrolled persons prescribed by the ⁴[Central Government]

Persons to
be attested

12. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person

Mode of
attestation.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life

¹ Ins by the Indian Army (Amendment) Act, 1918 (11 of 1918), s 5

² Ins by the Indian Army (Amendment) Act, 1934 (33 of 1934), s 6

³ The words "(of which the last pay statement, if produced, shall be evidence)" rep. by Act 11 of 1918, s 26 and Sch

⁴ Subs by the A O for "G G in C"

(Chapter II.—Enrolment and Attestation. Chapter III.—Dismissal and Discharge.)

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER III.

DISMISSAL AND DISCHARGE.

Dismissed by
Central
Government
and Com-
mander-in-
Chief in
India.
Dismissal by
officer
commanding
army,
division,
brigade, etc.

13. ¹[(1)] The ²[Central Government] ^{3*} may dismiss from the service any person subject to this Act.

⁴[(2) The Commander-in-Chief in India may dismiss from the service any person subject to this Act other than an Indian commissioned officer.]

14. An officer commanding an army, ⁵[army corps], division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than an ^{6*} officer.

15. [Dismissal of convicts.] Rep. by the Indian Army (Amendment) Act, 1918 (XI of 1918), s. 26 and Sch.

Discharge.

16. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

Certificate
to person
dismissed or
discharged.

17. Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

(a) the authority dismissing or discharging him ;

(b) the cause of his dismissal or discharge ;

(c) the full period of his service in the army.

Discharge,
etc., out of
India.

18. (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

¹ The original s. 13 was re-numbered as sub-section (1) of that section by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 7.

² Subs. by the A. O. for "G. G. in C".

³ The words "or the Commander-in-Chief in India" rep. by Act 33 of 1934, s. 7.

⁴ Ins. by s. 7, *ibid*.

⁵ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 6.

⁶ The word "Indian" rep. by Act 33 of 1934, s. 8. The words "an Indian" had been subs. for the words "a Native" by Act 11 of 1918, s. 2.

(Chapter III—Dismissal and Discharge Chapter IV—Summary Reduction and Punishments otherwise than by order of Court martial)

(2) Any person enrolled under this Act who is dismissed from the service and who when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed

¹[Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or in the case of a sentence of transportation or imprisonment, a portion of such other punishment, may be inflicted before he is sent to India]

* * * * *

CHAPTER IV

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT MARTIAL

19. (1) The Commander in Chief in India an officer commanding an army, ²[army corps] division or brigade or any prescribed officer, may reduce to a lower grade or to the ranks ³[any warrant officer or] any non commissioned officer under his command

Reduction of
warrant
officers and
non com
missioned
officers.

⁴[Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy]

(2) The commanding officer of an acting non commissioned officer may order him to revert to his permanent grade as a non commissioned officer or, if he has no permanent grade above the ranks, to the ranks

20. (1) The Commander in Chief in India may, subject to the control of the ⁵[Central Government] specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court martial, and the officer or officers by whom, and the extent to which such minor punishments may be awarded

Minor
punish
ments

(2) ⁶[Imprisonment in military custody and, in the case of persons subject to this Act on active service, any prescribed field punishment may be specified as minor punishments] provided that—

(a) the term of such imprisonment [or field punishment] shall not exceed twenty eight days and

(b) it shall not be awarded to any person of or above the rank of non commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank

¹ Ins by the Indian Army (Amendment) Act, 1918 (11 of 1918), s 7

² Sub section (3) rep by s 26 and Sch, *ibid*

³ Ins by s 6, *ibid*

⁴ Ins by the Indian Army (Amendment) Act, 1934 (33 of 1934), s 9

⁵ Subs by the A O for G G in C

⁶ Subs by the Indian Army (Amendment) Act, 1920 (37 of 1920), s 2, for "Imprisonment in military custody may be specified as such a minor punishment"

⁷ Ins by s 2, *ibid*

(Chapter IV.—*Summary Reduction and Punishments otherwise than by order of Court-martial.*)

Collective
fines.

21. Whenever any weapon or part or a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, ¹[army corps], division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the ²[Viceroy's commissioned officers, warrant officers,] non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

Punishment
of certain
Indian
followers.

22. (1) For any offence, in breach of good order, the commanding officer of any corps or detachment on active service, in camp, on the march, or at any frontier post specified by the ³[Central Government] by notification in this behalf at which troops are stationed, may punish any ⁴[Indian] follower of such corps or detachment who is subject to this Act under section 2, sub-section (1), clause (c)—

(a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees :

(b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer ; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

Provost Marshals.

Appoint-
ment.

23. For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army, ⁵[army corps], division or independent brigade or an officer commanding the forces in the field ; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

Duties and
powers.

24. (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 6.

² Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 10, for " Indian officers ". The word " Indian " was substituted for " Native " by Act 11 of 1918, s. 2.

³ Subs. by the A. O. for " G. G. in C. "

⁴ Subs. by Act 11 of 1918, s. 2, for " Native ".

⁵ Ins. by s. 6, *ibid.*

(Chapter IV—*Summary Reduction and Punishments otherwise than by order of Court martial* Chapter V.—*Offences*)

order and discipline, and to prevent breaches of the same by persons belonging or attached to the army ¹[He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court martial]

²[(2) A provost marshal may punish with any punishment mentioned in section 22, sub section (1), clause (b), any follower who is subject to this Act under section 2, sub section (1), clause (c), and is a menial servant and who, on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline]

CHAPTER V

OFFENCES

Offences in respect of Military Service

25. Any person subject to this Act who commits any of the following offences, that is to say,— Offences punishable with death

- (a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend, or
- (b) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice, or
- (c) directly or indirectly holds correspondence with, or communicates intelligence to the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer, or
- (d) treacherously makes known the watchword to any person not entitled to receive it, or
- (e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State, or

¹ Ins. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 3

² Subs. by s. 3, *ibid.*, for the original sub sections (2) and (3)

(Chapter V.—Offences.)

- (f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency ; or
- (g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave ; or
- (h) in time of action, leaves his commanding officer or his post or party to go in search of plunder ; or
- (i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or
- (j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to the camp or quarters of any of His Majesty's forces, or forces a safeguard. or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind ;¹[or
- (k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving ;]

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Offences not punishable with death.

26. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) strikes, or forces or attempts to force, any sentry ; or
- (b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment ; or
- (c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard ; or
- (d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Mutiny and Insubordination.

Offences punishable with death.

27. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) begins, excites, causes ²[or conspires with any other persons to cause,] or joins in any mutiny ; or

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 8.

² Ins. by s. 9, *ibid*.

(Chapter V—Offences)

- (b) being present at any mutiny, does not use his utmost endeavours to suppress the same, or
- (c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer, or
- (d) uses or attempts to use criminal force to, or commits an assault on his superior officer whether on or off duty knowing or having reason to believe him to be such, or
- (e) disobeys the lawful command of his superior officer,

shall, on conviction by court martial be punished with death or with such less punishment as is in this Act mentioned

28. Any person subject to this Act who commits any of the following offences, that is to say—

Offences not punishable with death

- (a) is grossly insubordinate or insolent to his superior officer in the execution of his office or
- (b) refuses to superintend or assist in the making of any field work or other military work of any description ordered to be made either in quarters or in the field, or
- (c) impedes a provost marshal or an assistant provost marshal, or any officer or non commissioned officer or other person legally exercising authority under or on behalf of a provost marshal, or, when called on refuses to assist in the execution of his duty the provost marshal assistant provost marshal, or any such officer, non commissioned officer or other person,

shall, on conviction by court martial be punished with imprisonment, or with such less punishment as is in this Act mentioned

Desertion Fraudulent Enrolment and Absence without Leave

29. Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court martial, be punished with death, or with such less punishment as is in this Act mentioned

30. Any person subject to this Act who commits any of the following offences, that is to say,—

Harbouring deserter, absence without leave, etc

- (a) knowingly harbours any deserter, or who, knowing, or having reason to believe that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended, or
- (b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person, or

(Chapter V.—Offences.)

- (f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency ; or
- (g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave ; or
- (h) in time of action, leaves his commanding officer or his post or party to go in search of plunder ; or
- (i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or
- (j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind ;
¹[or
- (k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving ;]

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Offences not
punishable
with death.

26. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) strikes, or forces or attempts to force, any sentry ; or
- (b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment ; or
- (c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard ; or
- (d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Mutiny and Insubordination.

27. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) begins, excites, causes ²[or conspires with any other persons to cause,] or joins in any mutiny ; or

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 8.

² Ins. by s. 9, *ibid*.

Offences
punishable
with death.

(Chapter I —Offences)

- (b) being present at any mutiny does not use his utmost endeavours to suppress the same or
- (c) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny or of any conspiracy against the State does not without delay give information thereof to his commanding or other superior officer or
- (d) uses or attempts to use criminal force to or commits an assault on his superior officer whether on or off duty knowing or having reason to believe him to be such or
- (e) disobeys the lawful command of his superior officer

shall on conviction by court martial be punished with death or with such less punishment as is in this Act mentioned

28 Any person subject to this Act who commits any of the following offences that is to say— Offences not punishable with death

- (a) is grossly insubordinate or insolent to his superior officer in the execution of his office or
- (b) refuses to superintend or assist in the making of any field work or other military work of any description ordered to be made either in quarters or in the field or
- (c) impedes a provost marshal or an assistant provost marshal or any officer or non commissioned officer or other person legally exercising authority under or on behalf of a provost marshal or when called on refuses to assist in the execution of his duty the provost marshal assistant provost marshal or any such officer non commissioned officer or other person

shall on conviction by court martial be punished with imprisonment or with such less punishment as is in this Act mentioned

Desertion Fraudulent Enrolment and Absence without Leave

29 Any person subject to this Act who deserts or attempts to desert the service shall on conviction by court martial be punished with death or with such less punishment as is in this Act mentioned Desertion

30 Any person subject to this Act who commits any of the following offences that is to say — Harbouring deserter absence without leave etc

- (a) knowingly harbours any deserter or who knowing or having reason to believe that any other person has deserted or that any deserter has been harboured by any other person does not without delay give information thereof to his own or some other superior officer or use his utmost endeavours to cause such deserter to be apprehended or
- (b) knowing or having reason to believe that a person is a deserter procures or attempts to procure the enrolment of such person, or

(Chapter V.—Offences.)

- (c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in the same or any other corps or department ; or
 - (d) absents himself without leave or without sufficient cause over-stays leave granted to him ; or
 - (e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ; or
 - (f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty ; or
 - (g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march ; or
 - (h) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave ; or
 - (i) without proper authority is found two miles or upwards from camp ; or
 - (j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating ;
- shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Disgraceful Conduct.

disgraceful
conduct.

31. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of ¹[the Crown], entrusted to him ; or
- (b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted ; or
- (c) wilfully destroys or injures any property of ¹[the Crown] entrusted to him ; or
- (d) commits theft in respect of any property of ¹[the Crown], or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army ; or

¹ Subs. by the A. O. for "Govt."

(Chapter V —Offences)

- (e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen ;
or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person , or
- (g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity , or
- (h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person ;
or
- (i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission ,

shall, on conviction by court martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Intoxication

32. Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Offences in relation to Persons in Custody

33. Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court martial, be punished with death, or with such less punishment as is in this Act mentioned

Offences
punishable
with death

34. Any person subject to this Act who commits any of the following offences, that is to say,—

Offences not
punishable
with death

- (a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge , or
- (b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape , or
- (c) being in military custody, leaves such custody before he is set at liberty by proper authority ,

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

(Chapter V.—Offences.)

Offences in relation to Property.

Offences in
relation to
property.

35. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits extortion, or without proper authority exacts from any person carriage, portage or provisions ; or
- (b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property ; or
- (c) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service ; or
- (d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessities ; or
- (e) loses by neglect anything mentioned in clause (d) ; or
- (f) wilfully injures anything mentioned in clause (d) or any property belonging to ¹[the Crown], or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to, the army ; or
- (g) sells, pawns, destroys or defaces any medal or decoration granted to him ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to False Documents and Statements.

False
accusations
and offences
in relation to
documents.

36. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) makes a false accusation against any person subject to military law, knowing such accusation to be false ; or
- (b) in making any complaint under section 117 ²[or section 117A], knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact ; or
- (c) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making

¹ Subs. by the A. O. for "Govt."

² Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 11.

(Chapter V—Offences)

any document containing a false statement, or by omitting to make a true entry or document containing a true statement, or

- (d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to ¹[the Crown] or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid

shall, on conviction by court martial be punished with imprisonment or with such less punishment as is in this Act mentioned

37. Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall on conviction by court martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

False answers on enrolment

Offences in relation to Courts martial

38 Any person subject to this Act who commits any of the following offences that is to say,—

Offences in relation to courts martial

- (a) when duly summoned to attend as a witness before a court martial intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up, or

- (b) intentionally offers any insult or causes any interruption or disturbance to or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of a court martial while sitting, or

- (c) having been duly sworn or affirmed before any court martial or other military court competent to administer an oath or affirmation makes any statement which is false, and which he either knows or believes to be false or does not believe to be true

shall on conviction by court martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

¹ Subs by the A O for "Court"

(Chapter V.—Offences.)

Miscellaneous Military Offences.

Miscellaneous military offences.

39. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being an officer or warrant officer, behaves in a manner unbecoming his position and character ; or
- (b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position ; or
- (c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority ; or
- (d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person ; or
- (e) attempts to commit suicide and does any act towards the commission of such offence ; or
- (f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bázár, carrying a sword, bludgeon or other offensive weapon ; or
- (g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service ; or
- (h) neglects to obey any general or garrison or other orders ; or
- (i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Attempts.

¹[39A. Whoever attempts to commit an offence punishable by this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.]

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 10.

(Chapter V —Offences)

Abetment

40. Every person subject to this Act who abets any offence punishable ^{Abetment} under this Act may be punished with the punishment provided in this Act for such offence

Civil Offences

41. ¹[(1)] Every person subject to this Act ^{at any place within British India or} at any place beyond British India offence shall be deemed to be guilty of offence if charged therewith under this section, shall, subject to the provisions of ^{British India.} this Act, be liable to be tried for the same by court martial, and on conviction to be punished as follows, that is to say —

- (a) if the offence is one which would be punishable under the law of British India with death or with transportation he shall be liable to suffer any punishment ⁴[other than whipping] assigned for the offence by the law of British India and
- (b) in other cases he shall be liable to suffer any punishment ⁴[other than whipping] assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline

²[Provided that a person subject to this Act who at any place within British India or at any place, other than such frontier posts as may be specified by the ³[Central Government] by notification in this behalf, ⁶[in which the Central Government or the Crown Representative exercises jurisdiction by virtue of the Government of India Act, 1935, or of any Order in Council made under the Foreign Jurisdiction Act, 1890,] and while not on active service, commits the offence of murder or culpable homicide not amounting to murder in relation to a person not subject to military law or the offence of rape, shall not be deemed to be guilty of an offence against military law and shall not be tried by a court martial

(2) The powers of a court martial to try and to punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also a military offence]

42. [Certain civil offences triable by military law] Rep by the Indian Army (Amendment) Act, 1934 (XXXIII of 1934), s 13

¹ The original s 41 was re-numbered as sub section (1) of that section by the Indian Army (Amendment) Act, 1934 (33 of 1934), s 12

² Ins by s 12, *ibid*

³ The words "or when on active service in British India" rep. by s 12 *ibid*

⁴ Ins by the Indian Army (Amendment) Act, 1920 (37 of 1920) s 4

⁵ Subs by the A O for "G G in C"

⁶ Subs by the A O for "in which the G G in C exercises jurisdiction by virtue of the Indian (Foreign Jurisdiction) Order in Council, 1902"

(Chapter VI.—Punishments.)

CHAPTER VI.

PUNISHMENTS.

Punish-
ments.

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say :—

- (a) death ;
- (b) transportation for life or for any period not less than seven years ;
- (c) imprisonment ¹[either rigorous or simple] for any term not exceeding fourteen years ;
- ²[(cc) in the case of Indian commissioned officers, cashiering ;]
- (d) dismissal from the service ;

3* * * * * * *

- ⁴[(f) reduction, in the case of a warrant officer, to a lower grade or class or place in the list of his rank, or to the ranks ; or in the case of a non-commissioned officer, to a lower grade or a lower rank or to the ranks :

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy ;]

- (g) in the case of officers, warrant officers and non-commissioned officers, forfeiture ⁵[in the prescribed manner of seniority of rank and service for the purpose of promotion ;]

- ⁶[(gg) in the case of officers, ⁷[warrant officers and non-commissioned officers,] reprimand or severe reprimand ;]

- (h) forfeitures and stoppages as follows, namely :—

- (i) forfeiture of service for the purpose of ⁸* increased pay, pension or any other prescribed purpose ;

9 * * * * * *

- (iii) forfeiture, in the case of a person sentenced to ⁷[cashiering or] dismissal from the service ¹⁰* *, of all arrears of pay and allowances and other public money due to him at the time of such ⁷[cashiering or] dismissal.

¹ Subs. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 11(1), for “(with or without solitary confinement) ”.

² Cl. (cc) ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 14.

³ Cl. (c) rep. by s. 14, *ibid.*

⁴ Subs. by s. 14, *ibid.*, for the original clause.

⁵ Subs. by s. 14, *ibid.*, for “ of seniority of rank ”.

⁶ Cl. (gg) ins. by Act 11 of 1918, s. 11(3).

⁷ Ins. by Act 33 of 1934, s. 14.

⁸ The word “ promotion ” rep. by s. 14, *ibid.*

⁹ Sub-clause (ii) rep. by s. 14, *ibid.*

¹⁰ The words “ or whose sentence involves such dismissal ” rep. by Act 11 of 1918, s. 26 and Sch.

*(Preliminary.)**Inspection of affairs.*

SECTIONS.

35. Inquiry by Registrar.
36. Inspection of books of indebted society.
37. Costs of inquiry.
38. Recovery of costs.

Dissolution of society.

39. Dissolution.
40. Cancellation of registration of society.
41. Effect of cancellation of registration.
42. Winding up.

Rules.

43. Rules.

Miscellaneous.

44. Recovery of sums due to Government.
45. Power to exempt societies from conditions as to registration.
46. Power to exempt registered societies from provisions of the Act.
47. Prohibition of the use of the word "co-operative".
48. Indian Companies Act, 1882, not to apply.
49. Saving of existing societies.
50. [*Repealed.*]

ACT NO. II OF 1912.¹

[1st March, 1912.]

An Act to amend the Law relating to Co-operative Societies.

WHEREAS it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means, and for that purpose to amend the law relating to Co-operative Societies ; It is hereby enacted as follows :—

Preliminary.

1. (1) This Act may be called the Co-operative Societies Act, 1912 ; and
- (2) It extends to the whole of British India.

Short title
and extent.

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 95 ; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 7 ; and for Proceedings in Council, see *ibid.*, 1911, Pt. VI, pp. 186, 679, and *ibid.*, 1912, Pt. VI, pp. 3, 31 and 256.

This Act has been declared to be in force in the Sonthal Parganas by notification under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), see B. and O. Gazette, 1913, Pt. II, p. 105 ; and in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3.

It has been repealed in its application to—

- (1) the Bombay Presidency by the Bombay Co-operative Societies Act, 1925 (Bom. 7 of 1925) ;
- (2) the Madras Presidency by the Madras Co-operative Societies Act, 1932 (Mad. 6 of 1932) ;
- (3) Bihar and Orissa by the B. and O. Co-operative Societies Act, 1935 (B. and O. 6 of 1935) ; and
- (4) Orissa, separately, by the Orissa Laws Regulation, 1936 (1 of 1936).

(Preliminary Registration)

2. In this Act, unless there is anything repugnant in the subject or con- Definitions.
text,—

- (a) "by laws" means the registered by laws for the time being in force, and includes a registered amendment of the by laws
- (b) "committee" means the governing body of a registered society to whom the management of its affairs is entrusted
- (c) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by laws and any rules
- (d) "officer" includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or the by laws to give directions in regard to the business of the society
- (e) "registered society" means a society registered or deemed to be registered under this Act
- (f) "Registrar" means a person appointed to perform the duties of a Registrar of Co operative Societies under this Act and
- (g) "rules" means rules made under this Act

Registration

3. The ¹[Provincial Government] may appoint a person to be Registrar of The Regis-
Co operative Societies for the Province or any portion of it and may appoint ^{trar}
persons to assist such Registrar, and may, by general or special order, confer
on any such persons all or any of the powers of a Registrar under this Act.

4. Subject to the provisions hereinafter contained, a society which has ^{Societies}
as its object the promotion of the economic interests of its members in accord ^{which may}
ance with co operative principles, or a society established with the object of ^{be regis}
facilitating the operations of such a society, may be registered under this Act ^{tered}
with or without limited liability

Provided that unless the ¹[Provincial Government] by general or special
order otherwise directs—

- (1) the liability of a society of which a member is a registered society shall be limited,
- (2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited

¹ Subs by the A O for ' L. G

(Registration.)

Restrictions
on interest
of member
of society
with limited
liability and
a share
capital.

5. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

(a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules ; or

(b) have or claim any interest in the shares of the society exceeding one thousand rupees.

Conditions
of registra-
tion.

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

(a) reside in the same town or village or in the same group of villages ;
or,

(b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) The word “ limited ” shall be the last word in the name of every society with limited liability registered under this Act.

Power of
Registrar to
decide certain
questions.

7. When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final.

Application
for registra-
tion.

8. (1) For purposes of registration an application to register shall be made to the Registrar.

(2) The application shall be signed—

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1) ; and

(b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

Registration.

9. If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to the Act or to the rules, he may, if he thinks fit, register the society and its by-laws.

(Registration Rights and liabilities of members Duties of registered societies)

10 A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled Evidence of registration

11 (1) No amendment of the by laws of a registered society shall be valid until the same has been registered under this Act for which purpose a copy of the amendment shall be forwarded to the Registrar Amendment of the by laws of a registered society

(2) If the Registrar is satisfied that any amendment of the by laws is not contrary to this Act or to the rules he may if he thinks fit register the amendment

(3) When the Registrar registers an amendment of the by laws of a registered society he shall issue to the society a copy of the amendment certified by him which shall be conclusive evidence that the same is duly registered

Rights and liabilities of members

12 No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules or by laws Member not to exercise rights till due payment made

13 (1) Where the liability of the members of a registered society is not limited by shares each member shall notwithstanding the amount of his interest in the capital have one vote only as a member in the affairs of the society Votes of members

(2) Where the liability of the members of a registered society is limited by shares each member shall have as many votes as may be prescribed by the by laws

(3) A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy for the purpose of voting in the affairs of such other registered society any one of its members

14 (1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules Restrictions on transfer of share or interest

(2) In case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

- (a) he has held such share or interest for not less than one year and
- (b) the transfer or charge is made to the society or to a member of the society

Duties of registered societies

15 Every registered society shall have an address registered in accordance with the rules to which all notices and communications may be sent and shall send to the Registrar notice of every change thereof Address of society

(Duties of registered societies. Privileges of registered societies.)

Copy of Act,
rules and
by-laws to
be open to
inspection.
Audit.

16. Every registered society shall keep a copy of this Act and of the rules governing such society, and of its by-laws, open to inspection free of charge at all reasonable times at the registered address of the society.

17. (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society.

(3) The Registrar, the Collector or any person authorised by general or special order in writing in this behalf by the Registrar shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

Privileges of registered societies.

Societies to
be bodies
corporate.

18. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Prior claim
of society.

19. Subject to any prior claim of the ¹[Crown] in respect of land-revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

(a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan ;

(b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.

Charge and
set-off in
respect of
shares or
interest of
member.

20. A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

¹ Subs. by the A. O. for " Govt. ".

(Privileges of registered societies)

21. Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency towns Insolvency Act, 1909 nor a Receiver under the Provincial Insolvency Act, 1907, shall be entitled to or have any claim on such share or interest

Shares or interest not liable to attachment.

22. (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf or, if there is no person so nominated to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to such nominee heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by laws

Transfer of interest on death of member

Provided that—

(i) in the case of a society with unlimited liability such nominee, heir or legal representative, as the case may be may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid

(ii) in the case of a society with limited liability the society shall transfer the share or interest of the deceased member to such nominee heir or legal representative as the case may be being qualified in accordance with the rules and by laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person

23 The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member

Liability of past member

24 The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as they existed at the time of his decease

Liability of the estates of deceased member

¹ See now the Provincial Insolvency Act, 19 0 (5 of 1900)

(Privileges of registered societies Property and funds of registered societies)

[(2) The Government, by notification in the Official Gazette, may, in the case of any registered society or class of registered society, remit—
(a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively charge-
(b) any fee payable under the law of registration for the time being in force]

[In this sub section "Government" in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading letters of credit, policies of insurance, proxies and receipts, and in relation to any stamp duty falling within Item 59 in List I in the Seventh Schedule to the Government of India Act, 1935, means the Central Government, and save as aforesaid means the Provincial Government]

Property and funds of registered societies

29. (1) A registered society shall not make a loan to any person other than a member
Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society
(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of movable property
(3) The Provincial Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immovable property by any registered society or class of registered societies
30. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by laws
31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Provincial Government may, by rules, with non members, prescribe
32. (1) A registered society may invest or deposit its funds—
(a) in the Government Savings Bank, or
(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or

Ins. by the Revolution Act, 1920 (35 of 1920), s. 2 and Sch. I
Subs. by the A. O. for "L. G."
Subs. by the A. O. for "Local official Gazette".
Ins. by the A. O.

Investment of funds.

Restrictions on other transactions with non members.

Restrictions on loans.

(*Property and funds of registered societies. Inspection of affairs.*)

- (c) in the shares or on the security of any other registered society, or (d) with any bank or person carrying on the business of banking; approved for this purpose by the Registrar, or
- (e) in any other mode permitted by the rules.
- (2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

33. No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members :
 Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by-laws :

Funds not to be divided by way of profit.

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the [Provincial Government] in this behalf.

34. Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent. of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endow-ments Act, 1890.

Contribution to charitable purpose.

Inspection of affairs.

35. (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the committee, or of not less than one-third of the members, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

(2) All officers and members of the society shall furnish such information in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require.

Inquiry by Registrar.

36. (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorised by him by order in writing in this behalf to inspect the books of the society :
 Provided that—

Inspection of books of indebted society.

- (a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
- (b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(Inspection of affairs Dissolution of society)

(2) The Registrar shall communicate the results of any such inspection to the creditor

37. Where an inquiry is held under section 35, or an inspection is made under section 36, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society

38. Any sum awarded by way of costs under section 37 may be recovered, Recovery of costs on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person

Dissolution of society

39. (1) If the Registrar, after an inquiry has been held under section 35 or Dissolution after an inspection has been made under section 36 or on receipt of an application made by three fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society

(2) Any member of a society may, within two months from the date of an order made under sub section (1), appeal from such order

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period

(4) Where an appeal is presented within two months the order shall not take effect until it is confirmed by the appellate authority

(5) The authority to which appeals under this section shall be shall be the [Provincial Government]

Provided that the [Provincial Government] may, by notification in the [Official Gazette], direct that appeals shall lie to such Revenue authority as may be specified in the notification

40. Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten

41. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

(a) in the case of cancellation in accordance with the provisions of section 39, from the date of cancellation takes effect,

(b) in the case of cancellation in accordance with the provisions of section 40, from the date of the order

(Dissolution of society.)

42. (1) Where the registration of a society is cancelled under section 39 or section 40, the Registrar may appoint a competent person to be liquidator of the society.

(2) A liquidator appointed under sub-section (1) shall have power—

- (a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office;
- (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;
- (c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and
- (e) to give such directions in regard to the collection and distribution of the assets of the society, as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.¹

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.²

(5) Orders made under this section shall, on application, be enforced as follows:—

- (a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;
- (b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.⁴

¹ In its application to British Baluchistan this sub-section shall be read as if the words "or the British Baluchistan Civil Justice Regulation, 1896, as the case may be" were ins. at the end: see the British Baluchistan Laws Regulation, 1913 (2 of 1913), Sch. I.

² For sub-section (44) which applies to the U. P., see the Co-operative Societies (Amendment) Act, 1919 (U. P. 3 of 1919).

³ This sub-section has been modified in its application to the U. P., see *ibid.*

⁴ For s. 42A ins. in the C. P., see the Co-operative Societies (C. P. Amendment) Act, 1930 (C. P. 7 of 1930), s. 2.

(Rules)

Rules

43 (1) The [Provincial Government] may for the whole or any part of Rules the Province and for any registered society or class of such societies make rules² to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) subject to the provisions of section 5 prescribe the maximum number of shares or portion of the capital of a society which may be held by a member
- (b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications
- (c) prescribe the matters in respect of which a society may or shall make by laws and for the procedure to be followed in making alterations and abrogating by laws and the conditions to be satisfied prior to such making alteration or abrogation
- (d) prescribe the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members and the payment to be made and the interest to be acquired before the exercise of the right of membership
- (e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise
- (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings
- (g) provide for the appointment suspension and removal of the members of the committee and other officers and for the procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee and other officers
- (h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges if any to be made for such audit and for the periodical publication of a balance sheet showing the assets and liabilities of a society
- (i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted
- (j) provide for the persons by whom and the form in which copies of entries in books of societies may be certified

(Rules.)

(k) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares ;

(l) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators ;

(m) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members ;

(n) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ;

(o) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member ;

(p) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;

(q) prescribe the extent to which a society may limit the number of its members ;

(r) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ;

(s) subject to the provisions of section 39, determine in what cases an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals ; and

(t) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator.

(3) The [Provincial Government] may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(Rules Miscellaneous)

(5) All rules made under this section shall be published in the [Official Gazette], and on such publication shall have effect as if enacted in this Act

Miscellaneous

44. (1) All sums due from a registered society or from an officer or member of a registered society as such to the Government, including any costs awarded to the Government under section 37, may be recovered in the same manner as arrears of land revenue

(2) Sums due from a registered society to Government and recoverable under sub section (1) may be recovered, firstly, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability, and, thirdly in the case of other societies from the members

45. Notwithstanding anything contained in this Act, the [Provincial Government] may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration

46. The [Provincial Government] may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order

47. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "co operative" is part without the sanction of the [Provincial Government]

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor

48. The provisions of the Indian Companies Act, 1882, shall not apply to registered societies

49. Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904, shall be deemed to be registered under this Act, and its by laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded

50 [Repeal] Repeal by the Second Repealing and Amending Act, 1914 (XVII of 1914), s 3 and Sch II

Subs by the 1 O for L G
Sabs. by the 1 O for 'Local Official Gazette'
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THE INDIAN LUNACY ACT, 1912.

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Judicial powers over person and estate of lunatic.

SECTIONS.

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(Part I.—Preliminary. Chapter I.)

ACT No. IV OF 1912.¹

[16th March, 1912.]

An Act to consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to Lunacy ; It is hereby enacted as follows :—

PART I.

Preliminary.

CHAPTER I.

1. (1) This Act may be called the Indian Lunacy Act, 1912.
(2) It extends to the whole of British India, including British Baluchistan, the Santal Parganas, and the Pargana of Sipit.

2. Nothing contained in Part II shall be deemed to affect the powers of any High Court which is or hereafter may be² constituted by His Majesty by Letters Patent, over any person found to be a lunatic by inquiry or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic. 3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum³ [or mental hospital] for lunatics established or licensed⁴ [by any Government in British India] :
(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum³ [together with any other charges specified in this behalf by the⁵ [Provincial Government], in exercise of any power conferred upon⁶ [it] by this Act] :
(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns :

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 147 ; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 57 ; and for Proceedings in Council, see *ibid.*, 1911, Pt. VI, p. 655, and *ibid.*, 1912, Pt. VI, pp. 3, 30, 187 and 458. This Act except Chapter IV has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch., and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.
² Subs. by the A. O. for "established under the Indian High Courts Acts, 1861 to 1911".
³ Ins. by the Indian Lunacy (Amendment) Act, 1922 (6 of 1922), s. 2.
⁴ Subs. by the A. O. for "by Govt."
⁵ Subs. by the A. O. for "G. G. in C."
⁶ Subs. by the A. O. for "him".

(Part I—Preliminary Chapter I Part II—Reception, Care and Treatment of Lunatics Chapter II—Reception of Lunatics)

(4) "criminal lunatic" means any person for whose [detention] in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, or of section 30 of the Prisoners Act, 1900, [or of section 103A of the Indian Army Act, 1911]

(5) "lunatic" means an idiot or person of unsound mind

(6) "Magistrate" means a Presidency Magistrate, District Magistrate, Sub Divisional Magistrate or a Magistrate of the first class specially empowered by the [Provincial Government] to perform the functions of a Magistrate under this Act

(7) "medical officer" means a gazetted [medical officer in the service of the Crown], and includes a medical practitioner declared by general or special order of the [Provincial Government] to be a medical officer for the purposes of this Act

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the [Provincial Government] to be a medical practitioner for the purposes of this Act

(9) "prescribed" means prescribed by this Act or by rule made thereunder

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition

(11) "relative" includes any person related by blood, marriage or adoption and

(12) "rule" means a rule made under this Act

PART II.

Reception, care and treatment of Lunatics.

CHAPTER II

RECEPTION OF LUNATICS

4. (1) No person other than a criminal lunatic or a lunatic so found by Reception of Inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 38

* Subs by the Reception and Amending Act, 1923 (11 of 1923), s 2 and Sch I, for "con
* Subs by the Indian Army (Amendment) Act, 1923 (37 of 1923), s 5
* Subs by the A O for "L. O"
* Subs by the A O for "medical officer of Govt."

(Part II.—*Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.*)

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception orders on petition.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the [Provincial Government] has, by notification² in the [Official Gazette], declared such area as an area in which reception orders may be made.

6. ⁴[(1) Subject to the provisions of sub-section (3) the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented.]

Application
by whom to
be presented.

¹ Subs. by the A. O. for "L. G."
² For such a notification by the Government of Bengal, see Calcutta Gazette, 1913, Part I, p. 1630; by Bihar and Orissa, see B. and O. Gazette, 1913, Part II, p. 1392; by Madras, see Madras local Rules and Orders, 1923, Vol. I, p. 437; by Bombay, see Bombay local Rules and Orders, 1924, Vol. II, p. 694; by U. P., see U. P. Gazette, 1914, Part I, p. 496; by Assam, see Assam Gazette, 1917, Part II, p. 1364.
³ Subs. by the A. O. for "local official Gazette";
⁴ Subs. by the Indian Lunacy (Amendment) Act, 1926 (5 of 1926), s. 2, for the original sub-section.

(Part II—Reception, Care and Treatment of Lunatics Chapter II.—Reception of Lunatics)

(2) [If the petition is not presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition] shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, personally seen the said lunatic

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement

7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit

8. Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or

may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order

Subs by the Indian Lunacy Amendment Act, 1926 (6 of 1926), s. 2, for ' If the petition is not so presented, it '.

[Part II.—*Reception, Care and Treatment of Lunatics. Chapter II.—Recep-*
tion of Lunatics.)]

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

(a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

[11A. (1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last-mentioned person shall be construed accordingly :

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date or any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution :

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the

Further provisions as to reception orders on petition.

Power to appoint substitute for the person upon whose application a reception order has been made.

(Part II—Reception, Care and Treatment of Lunatics Chapter II—Reception of Lunatics)

lunatic, unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(3) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub section (2) may be sent by post to the last known address of the person for whom it is intended.]

[11B.] (1) When an arrangement has been made with any foreign Bureau-Reception order in case of lunatics from foreign States in India, the Central Government may, by notification in the Official Gazette, direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the province or provinces within which such reception orders may be made.

(2) On publication of a notification under sub section (1) the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely—

(a) an application for a reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the Provincial Government in this behalf,

(b) the functions of the Magistrate shall be performed by such officer as the Provincial Government may, by general or special order appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions,

(c) for the purposes of sections 5 and 18 (1), the expressions "medical officer" and "medical practitioner" shall include such person or class of persons as the Provincial Government may specify in this behalf,

(d) the Magistrate may in his discretion extend the period prescribed by section 19 within which the alleged lunatic must have been medically examined, and

(e) sections 6 (1), (2), (3), 11, 11A, and 31 of the Act, shall not apply, and with such other modifications, restrictions or adaptations as the

¹ This section was originally ins as s 11A by the Indian Lunacy (Amendment) Act, 1916 (12 of 1916), and was renumbered as s 11B by the Indian Lunacy (Amendment) Act, 1928

(Part II.—*Reception, Cure and Treatment of Lunatics.* Chapter II.—*Reception of Lunatics.*)

[Central Government] may, by notification in the [Official Gazette], direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order made under section 7 or section 10, as the case may be.

Reception orders otherwise than on petition.

12. When any European who is subject to the provisions of the Army & Air Force Discipline Act or that Act as modified by the Indian Navy Act, 1934, [the Air Force Act or the Indian Air Force Act, 1934,] has been declared a lunatic in accordance with the provisions of the military [naval] [air force] regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorised for the purpose by the [Central Government].

Reception order in case of a European lunatic soldier, sailor or airman.

13. (1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous or dangerous lunatics and cruelly treated or not under proper care and control.

Powers and duties of police in respect of wandering or dangerous lunatics and cruelly treated or not under proper care and control.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

14. Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to

Reception order in case of wandering and dangerous lunatics.

1 Subs. by the A. O. for "G. G. in C."
2 Subs. by the A. O. for "Gazette of India".

3 Coll. Stats., Vol. I.

4 Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

5 Subs. by the Indian Air Force Act, 1932 (14 of 1932), s. 130 and Sch., for "or the Air Force Act" which had been ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

6 Ins. by Act 10 of 1927, s. 2 and Sch. I.

7 For notifications under this section, see Gen. R. & O., Vol. IV, pp. 342-343.

(Part II—Reception, Care and Treatment of Lunatics Chapter II—Reception of Lunatics)

such person, make a reception order for the admission of such lunatic into an asylum

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative

15. (1) If it appears to the Magistrate, on the report of a police officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment in writing, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, if he is of opinion that the person in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary :

(Part II.—Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.)

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

17. All acts which the Magistrate is authorised or required to do by sections 14, 15 or 16 may be done in the Presidency-towns * * * by the Commissioner of Police, or by an officer in charge of a police-station is authorised or required to perform may be performed in any of the Presidency-towns by an officer of the police force not below the rank of an inspector.

Further provisions as to reception orders and medical certificates.

18. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition, for the person authorised so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order :

Authority
for recep-
tion.

Time and
manner of
medical ex-
amination of
lunatic.

Medical cer-
tificates.

Commissioner
of Police,
etc., to act
in the Presi-
dency-town.

(Part II—Reception, Care and Treatment of Lunatics Chapter II—Reception of Lunatics)

[Provided that no reception order shall continue to have effect—

(a) after the expiry of thirty days from the date on which it was made unless the lunatic has been admitted to the place mentioned therein within that period, or
(b) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed]

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted

22. Subject to the provisions of section 85 no Magistrate shall make a reception order for the admission of any lunatic into any Government asylum outside the province in which the Magistrate exercises jurisdiction

23. When any reception order has been made under sections 7, 10, 11 or 15, the Magistrate may, for reasons to be recorded in writing direct that the lunatic, pending his removal to an asylum, be detained in suitable custody removal to such place as the Magistrate thinks fit

24. An order under section 466 or section 471 of the Code of Criminal Procedure, 1898, or under section 30 of the Prisoners Act, 1900 [or under section 103A of the Indian Army Act, 1911] directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred

25. A lunatic so found by inquisition may be admitted into an asylum—
(1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court,
(2) in the case of an inquisition under Chapter V, on an order made by the District Court

26. (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court Order for
(2) in the case of an inquisition under Chapter V, on an order made by the District Court

1. Ins. by the Indian Lunacy (Amendment) Act, 1923 (22 of 1923), s. 2
2. Sub. by the A. O. for "any asylum established by Govt.
3. Ins. by the Indian Army (Amendment) Act, 1923 (23 of 1923), s. 5

(Part II.—*Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics. Chapter III.—Care and Treatment.*)

as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person there- in mentioned.

Amendment of order or certificate.

Amendment
of order or
certificate.

27. If, after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

Appointment
of visitors.

28. (1) The Provincial Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor *ex-officio* of all the asylums within the limits of his jurisdiction.

Monthly
inspection
by visitors.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

(Part II—Reception, Care and Treatment of Lunatics Chapter III—Care and Treatment)

30. (1) When any person is [detained] under the provisions of section 466 or section 471 of the Code of Criminal Procedure 1898² [or under the provisions of section 103A of the Indian Army Act, 1911] the Inspector General of Prisons if such person is [detained] in a jail or the visitors of the asylum or any two of them, if he is [detained] in an asylum may visit him in order to ascertain his state of mind, and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid, and such Inspector General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is [detained]

(2) The [Provincial Government] may empower the officer in charge of the jail in which such person may be [detained] to discharge all or any of the functions of the Inspector General under sub section (1)

Discharge of Lunatics

31. (1) Three of the visitors of any asylum of whom one shall be a medical officer, may, by order in writing direct the discharge of any person detained in such asylum and such person shall thereupon be discharged

Provided that no order under this sub section shall be made in the case of a person detained under a reception order under section 12 or in the case of a criminal lunatic otherwise than as provided by section 30 of the Prisoners Act, 1900

(2) When such order is made if the person is detained under the order of any public authority notice of the order of discharge shall be immediately communicated to such authority

32 (1) A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum

Provided that no lunatic shall be discharged under the provisions of sub section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accordance with the military⁴, naval⁵ [or air force] regulations in force for the time being, or until the officer making the order applies for his transfer to the military⁴, naval⁵ [or air force] authorities in view to his removal to England

¹ Sub. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and Sch. I, for "con

² Sub. by the Indian Army (Amendment) Act 1923 (23 of 1923), s. 5

³ Ins. by the Indian Army (Amendment) Act 1923 (23 of 1923), s. 5

⁴ Ins. by the Amending Act 1914 (75 of 1914) s. 2 and Sch. I

⁵ Ins. by the Amending Act 1914 (75 of 1914) s. 2 and Sch. I

Order of
discharge
from asylum
by visitors
Inspector
General or
visitors

Discharge of
lunatics in
other cases
and of
European
lunatics

(Part II.—*Reception, Care and Treatment of Lunatics. Chapter III.—Care and Treatment.*)

(3) Whenever it appears to the officer in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer Commanding the division, district, brigade, or force, or other officer authorised to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the military ¹[, naval] ²[or air force] regulations in force for the time being.

33. When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

34. If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14, 15 or 17 is subsequently found on an institution under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

Removal of lunatics.

35. (1) ³[Any lunatic may, in accordance with any general or special order of the ⁴[Provincial Government], be removed from ⁵[any Government asylum] to any other asylum within the province, or to any other asylum in any other province, with the consent of the ⁶[Provincial Government] of that province:]

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

¹ Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch. I.
² Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.
³ Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for the original words.
⁴ Subs. by the A. O. for "L. G."
⁵ Subs. by the A. O. for "any asylum established by Govt."

Removal of
lunatics and
criminal
lunatics.

Discharge of
person
subsequently
found on
institution
not to be of
unsound
mind.

Order of
discharge on
undertaking
of relative
for due care
of the
lunatic.

(Part II.—*Reception, Care and Treatment of Lunatics Chapter III—Care and Treatment. Part III—Judicial Inquiry as to Lunacy Chapter IV.—Proceedings in Lunacy in Presidency towns*)

(2) The [Provincial Government] may make such general or special order as [it] thinks fit directing the removal of any person for whose [detention] an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898, [or under section 103A of the Indian Army Act, 1911], from the place where he is for the time being [detained] to any asylum, jail or other place of safe custody [in the province, or to an asylum, jail or other place of safety in any other province with the consent of the [Provincial Government] of that province]

Escape and recapture

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorised by law, and in case of escape may, by virtue of such order, be re-taken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorised in that behalf by the said person in charge, and conveyed to and received and detained in such asylum

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12 the power to re-take such escaped lunatic under this section shall be exercised only for a period of one month from the date of his escape.

PART III.

Judicial Inquiry as to Lunacy.

CHAPTER IV.

PROCEEDINGS IN LUNACY IN PRESIDENCY TOWNS

Inquisition

37. The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay

as re subs by the Proclamation Act, 1920

Ins by the Indian Army (Amendment) Act, 1923 (13 of 1923), s. 5
Subs by Act 11 of 1923, s. 2 and Sch. I, for "confinement"
Subs by Act 38 of 1920, s. 2 and Sch. I, for "in British India"
Subs. by the A. O. for "L. G."

in Lunacy in
Presidency
towns.

(Part III.—Judicial Inquisition as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

38. (1) The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be lunatic, is of unsound mind and incapable of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

39. Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.

40. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

41. (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

(2) The Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

42. The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

43. (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

44. If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form, it may either

Amendment of finding of District

Rules respecting dance examination of females alleged to be lunatic. Power to direct District Court to make inquisition in certain cases.

Powers of Court in respect of attendance and examination of lunatic.

Application by whom to be made. Notice of time and place of inquisition.

Court may order inquisition as to persons alleged to be insane.

(Part III—Judicial Inquisition as to Lunacy Chapter IV—Proceedings in Lunacy in Presidency towns)

amend the same or refer it back to the Court which made the inquisition to Court if

be amended

45. The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act, 1858, immediately before the commencement of this Act

Judicial powers over person and estate of lunatic

46. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates

(2) When upon the inquisition it is specially found that the person to

whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic

47. The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, respect of that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immovable, of which the estate may consist.

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immovable property of the lunatic, or

(b) lease any such property for a term exceeding five years

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose

48. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit

(Part III.—Judicial Inquiry as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

Management and administration.

49. The Court may, if it appears to be just or for the Lunatic's benefit, order that any property, moveable or immovable, of the Lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

- (1) the payment of the Lunatic's debts or engagements;
- (2) the discharge of any incumbrance on his property;
- (3) the payment of any debt or expenditure incurred for the Lunatic's maintenance or otherwise for his benefit;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto;

(5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

50. (1) The manager of the Lunatic's estate shall, in the name and on behalf of the Lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a Lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

51. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes Lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

52. (1) Where a person, being a member of a partnership firm, is found to be a Lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the Lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

Power to dispose of Lunatic's property for certain purposes.

Execution of conveyances and powers by manager under order of Court.

Court may order of contract.

Dissolution and disposal of property of partner-ship on a member becoming Lunatic.

(Part III—Judicial Inquiry as to Lunacy Chapter IV—Proceedings in Lunacy in Presidency towns)

53. Where a Innatic has been engaged in business the Court may, if it appears to be for the Innatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

54. Where a lunatic is entitled to a lease or under lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager may dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit

55 If a lunatic is possessed of any immovable property situate beyond the local limits of the jurisdiction of the Court which by the law in force in the Province wherein such property is situated subjects the proprietor to the jurisdiction of the Court of Wards the said Court of Wards may assume the charge of such property and manage the same accord-
ing to the law for the time being in force for such management

(2) the surplus of the income of such property after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct

(3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as it relates to the management of the said immovable property which so subjects the proprietor as aforesaid) the powers given by any other section

56 (7) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property, if money or it of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(7) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person

(Part III.—Judicial Inquiry as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

Vesting orders.

57. Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities, or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

58. Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General.

59. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

60. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquiry into the unsoundness of mind of an alleged lunatic; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

61. The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy.

Power to
order
transfer of
stock
belonging to
lunatic in
certain cases.

Power to
order
transfer of
stock of
lunatic
residing out
of British
India and
the United
Kingdom.

Power to
apply
property for
lunatic's
"maintenance
case of
temporary
lunacy.

Proceedings
in lunacy to
cease or to
be set aside
if Court
finds that
the
unsoundness
of mind has
ceased.

Power of
Court to
make rules.

{Part III—Judicial Inquisition as to Lunacy Chapter V—Proceedings in Lunacy outside Presidency towns}

CHAPTER V

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY TOWNS

Inquisition

62 Whenever any person not subject to the jurisdiction of any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic the District Court within whose jurisdiction such person is resident may upon application by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs

Lunacy

63 (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Lunacy (Property Protection) Act 1841 (hereinafter referred to as the Curator) or by the Government Pleader as defined in the Code of Civil Procedure 1908 or if the property of the alleged lunatic consists in whole or in part of land or any interest in land by the Collector of the district in which it is situate

(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject the proprietor if disqualified to the jurisdiction of the Court of Wards the application may be made by the Collector on behalf of the Court of Wards

64 The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate

65 (1) The District Court if it thinks fit may appoint two or more persons to act as assessors to the Court in the said inquisition

(2) Upon the completion of the inquisition the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a Commission to any subordinate Court to make an inquiry into the alleged lunatic's condition

(Part III.—Judicial Inquisition as to Lunacy. Chapter V.—Proceedings in Lunacy outside Presidency-towns.)

make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

(2) On the completion of the inquisition the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, shall be authorised to take charge of the same.

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic :

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the Provincial Government] or of such authority as it may appoint in this behalf.

by District Court and proceedings thereon.

Custody of lunatics and management of their estates.

Court of Wards to be authorised in certain cases to take charge of estate of lunatic.

Power to direct Collector to take charge of person and estate of lunatic in certain cases.

Control over proceedings of Collector.

(Part III—Judicial Inquiry as to Lunacy Chapter V—Proceedings in Lunacy outside Presidency towns)

71. (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic

72. The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic

73. A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic

Provided that no manager so appointed shall without the permission of the Court—

- (a) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immovable property of the lunatic,
- (b) lease any such property for a term exceeding five years

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

(Part III.—*Judicial Inquisition as to Lunacy. Chapter V.—Proceedings in Lunacy outside Presidency-towns.*)

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immoveable property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of the Collector, may

Manager to
furnish
inventory
and annual
accounts.

Preceding
if accuracy
of inventory
or accounts
is impugned.

Payment
into public
treasury and
investment
of proceeds of
estate.

Relative
may sue for
an account.

Removal of
managers
and
guardians.

(Part III—Judicial Inquisition as to Lunacy Chapter V—Proceedings in Lunacy outside Presidency towns Part IV—Miscellaneous Chapter VI—Establishment of Asylums)

compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property

82. (1) When any person has been found under this Chapter to be of

unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs

(2) The inquiry shall as far as may be be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter

PART IV.

Miscellaneous.

CHAPTER VI

ESTABLISHMENT OF ASYLUMS

84. The [Provincial Government] may establish or license the establishment of asylums at such places as it thinks fit if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases]

84A. If in any licensed asylum no provision for curative treatment has been made, or the [Provincial Government] considers that the

(Part IV.—Miscellaneous. Chapter VI.—Establishment of Asylums. Chapter VII.—Expenses of Lunatics.)

provision made is insufficient, the [Provincial Government] may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the [Provincial Government] may revoke the licence.]

[85. The Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province in accordance with any general or special order³ of the [Provincial Government] made in that behalf with the consent of the [Provincial Government] of such other province.]

CHAPTER VII.

EXPENSES OF LUNATICS.

86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12.

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

88. If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

¹ Subs. by the A. O. for "I. G."
² Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for the original section.
³ For notifications by the G. G. in C. under this section as it stood originally, see Gen. R. and O., Vol. IV, pp. 344-345.
⁴ Ss. 88 and 89 have been amended in their application to the Province of Bombay by Bom. Act 15 of 1936, s. 2.

Payment of
cost of
maintenance
in licensed
asylums in
certain cases
by
Government.
Provision
for admission
of lunatics
in asylums
outside a
province.
provision for
curative
treatment is
insufficient.
not comply
with the requisition
within a reasonable
time, the [Provincial
Government] may
revoke the licence.]
[85. The Magistrates
or Courts exercising
jurisdiction in any
province may send
lunatics or any class
of lunatics to any
asylum situate in
any other province
in accordance with
any general or special
order³ of the [Provincial
Government] made
in that behalf with
the consent of the
[Provincial Govern-
ment] of such other
province.]
CHAPTER VII.
EXPENSES OF LUNATICS.
86. (1) When any
lunatic is admitted
to a licensed asylum
under a reception
order or an order
under section 25,
and no engagement
has been taken from
the friends or relatives
of the lunatic or
order made by the
Court for the payment
of expenses under
the provisions of this
Act, the cost of
maintenance of such
lunatic shall, subject
to the provision of
any law for the time
being in force, be
paid by the Govern-
ment to the person
in charge of such
asylum.
(2) The paymaster
of the military circle
within which any
asylum is situated
shall pay to the
officer in charge of
such asylum the
cost of maintenance
of every lunatic
received and detained
therein under an
order made under
section 12.
87. Any money in
the possession of a
lunatic found
wandering at large
may be applied by
the Magistrate
towards the payment
of the cost of main-
tenance of the
lunatic or of any
other expenses
incurred on his
behalf, and any
moveable property
found on the person
of the lunatic may
be sold by the
Magistrate, and the
proceeds thereof
similarly applied.
88. If a lunatic
detained in an
asylum on a
reception order
made under
section 14,
section 15 or
section 17 has
an estate applicable
to his maintenance,
or if any person
legally bound to
maintain such
lunatic has the
means to maintain
him, the authority
which made the
reception order or
any local authority
liable for the cost
of maintenance of
such lunatic under
any law for the
time being in force
may apply to the
High Court or
District Court
within the local
limits of the original
jurisdiction of which
the estate of the
lunatic is situate
or the person
legally bound to
maintain him
resides, for an
order for the
payment of the
cost of maintenance
of the lunatic.
1 Subs. by the A. O.
for "I. G."
2 Subs. by the
Devolution Act,
1920 (38 of 1920),
s. 2 and Sch. I,
for the original
section.
3 For notifications
by the G. G. in
C. under this
section as it stood
originally, see
Gen. R.
and O., Vol. IV,
pp. 344-345.
4 Ss. 88 and 89
have been amended
in their application
to the Province of
Bombay by
Bom. Act 15 of
1936, s. 2.

(Part IV—Miscellaneous Chapter VII—Expenses of Lunatics)

89. (1) The Court shall inquire into the matter in a summary way, and Order of Court and enforcement thereof

of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned

[89A. (1) In computing the amount payable on account of the cost of maintenance of lunatics detained in any asylum for the cost of whose maintenance any Provincial Government is liable charges may be included on account of the upkeep of the asylum and of the capital cost of establishment thereof

(2) In the case of any such lunatic under detention immediately before the commencement of Part III of the Government of India Act 1935 the amount payable by any Provincial Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the Governor General in Council in force immediately before that date and applicable to his case]

[89B. (1) When under the provisions of this Act the cost of the main tenance of a lunatic is payable by the Government, then such cost shall be payable—

- (a) in the case of a lunatic not domiciled in British India by the [Provincial Government] of the province in which the reception order or the order under section 23, as the case may be was made, and
- (b) in the case of a lunatic domiciled in British India by the [Provincial Government] of the province in which the lunatic has last resided for a period of five years before the reception order or the order under section 23, as the case may be, was made, or, if the lunatic has not been resident in any one province for such period, by the [Provincial Government] of the province in which such order was made

* * * * *

90 The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act

Indian Lunacy Lunatic, maintain

CHAPTER VIII.

RULES.

91. (1) * * * The [Provincial Government] may make rules for all or any of the following purposes, namely:—

- (a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court which is or may hereafter be [constituted by His Majesty by Letters Patent];
- (b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;
- (c) to regulate the [detention], care, treatment and discharge of criminal lunatics;
- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another;
- (e) to regulate the transfer of criminal lunatics to asylums;
- (f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government;
- (g) to prescribe the [Government asylums] within the province to which lunatics from any area or any class of lunatics shall be sent;
- (h) to prescribe conditions subject to which asylums may be licensed;
- (i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section, the [Provincial Governments] may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

Publication
of rules.

92. All rules made under section 91 shall be published in the [Official Gazette], and shall thereupon have effect as if enacted in this Act.

¹ The words "Subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.
² Subs. by the A. O. for "L. G."
³ Subs. by the A. O. for "established under the Indian High Courts Acts, 1861 to 1911".
⁴ Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I for "con-
 guement".
⁵ Subs. by the A. O. for "asylums established by Govt."
⁶ Subs. by the A. O. for "Local Governments".
⁷ Subs. by the A. O. for "local official Gazette".

Power of
Provincial
Government
to make
rules.

(Part IV—Miscellaneous Chapter IX—Supplemental Provisions)

CHAPTER IX

SUPPLEMENTAL PROVISIONS

93. Any person who—

- (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or
- (b) for gain detains two or more lunatics in any place not being an asylum,
- shall be punishable with imprisonment which may extend to two years or with fine or with both

94. The provisions of Chapter XLII of the Code of Criminal Procedure, Provision 1898, shall, so far as may be, apply to bonds taken under this Act

95. (1) When any sum is payable in respect of pay, pension, gratuity, or other similar allowance to any person [by the Secretary of State or any Government in British India] and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof, as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance

(2) The Secretary of State or, as the case may be, the Government concerned shall be discharged of all liability in respect of any amounts paid in accordance with this section

96. Subject to any rules, the forms set forth in the First Schedule, with Use of forms in Schedule, such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act

(Part IV.—Miscellaneous. Chapter IX.—Supplemental Provisions.)

98. Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or [the Central Government or the Crown Representative or by the law of Burma.]

99. The [Provincial Government] may make rules³ regulating the procedure for the reception and detention in asylums in [the province] of lunatics whose reception and detention are provided for by section 98.

100. (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858, for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858, before the commencement of this Act XXXV as if the order had been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

[100A. The powers conferred by this Act upon the Provincial Government shall, in relation to the Ranchi European Mental Hospital, be powers of the Central Government.]

101. [Repeal of enactments.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.

- ¹ Subs. by the A. O. for "the G. G. in C."
- ² Subs. by the A. O. for the words "L. G." which were subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for "G. G. in C."
- ³ For rules made by the G. G. in C. under this section as it originally stood, see Gen. R. and O., Vol. IV, pp. 345-352.
- ⁴ Subs. by Act 38 of 1920, s. 2 and Sch. I, for "British India".
- ⁵ Rep. by the Indian Lunacy Act, 1912 (4 of 1912).
- ⁶ Ins. by the A. O.

Ranchi
European
Mental
Hospital.

Power to
give effect to
warrants and
orders of
certain
Courts
outside
British
India.
Power to
make rules
for reception
of lunatics
received
from outside
British
India.
Orders under
repealed
Acts.

(Schedule I—Forms)

SCHEDULE I

FORMS

(See section 96.)

FORM I

Application for Reception Order

(See sections 5 and 6.)

In the matter of A B [1] residing at , by occupation , son of
a person alleged to be a lunatic
To
Residency Magistrate, for
[or District Magistrate of
or Sub Divisional Magistrate of
Magistrate specially empowered under Act IV of 1912 for
The petition of C D [2] residing at , by occupation , son of
of , in the town of , in the district of
I am [2] years of age
2 I desire to obtain an order for the reception of A B as a lunatic
in the
3 I last saw the said A B at [3] situated at [3]
4 I am the [4] of the said A B
[or if the petitioner is not a relative of the patient state as follows]
I am not a relative of the said A B The reasons why this petition is
not presented by a relative are as follows [State them]
The circumstances under which this petition is presented by me are as
follows [State them]
5 The persons signing the medical certificates which accompany the
petition are [6]

or
or

[7] A day with in 14 days before the date of the presentation of the petition is to be
[7] Here state the relationship with the patient
[8] Here state whether either of the persons signing the medical certificates is a relative,
partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact re-
lationship

(Schedule I.—Forms.)

6. A statement of particulars relating to the said A. B. accompanies this petition.
 7. [*If that is the fact.*] An application for an inquiry into the mental capacity of the said A. B. was made to the _____ on the _____ and a certified copy of the order made on the said petition is annexed hereto.

[*Or if that is the fact.*]

No application for an inquiry into the mental capacity of the said A. B. has been made previous to this application.
 The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C. D.

The statements contained or referred to in paragraphs _____ are true to my knowledge; the other statements are true to my information and belief.

(Sd.) C. D.

Dated _____

Statement of particulars.

[*If any of the particulars in this statement is not known, the fact to be so stated.*]

The following is a statement of particulars relating to the said A. B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

(Schedule I—Forms)

Whether the patient is addicted to alcohol, or the use of opium, ginja, charas, bang, cocaine or other intoxicant
 [The statements contained or referred to in paras are true to my know-
 ledge The other statements are true to my information and belief]

[Signature by person
 making the statement]

FORM 2

Receipt on Petition

(See sections 7, 10)

I, the undersigned B F, being a Presidency Magistrate of
 or the Sub Divisional Magistrate of
 the District Magistrate of
 or a Magistrate of the first class specially empowered by Gov-
 ernment to perform the functions of a Magistrate under Act IV of 1912]
 upon the petition of C D of [] in the matter of A B [] a lunatic accom-
 panied by the medical certificates of G H a medical officer and of J K,
 a medical practitioner [or medical officer], under the said Act, hereto annexed,
 hereby authorise you to receive the said A B into your asylum and I dec-
 lare that I have [or have not] personally seen the said A B before making
 this order

(Sd) B F

(Designation as above)

To[]

FORM 3

Medical Certificate

(See sections 18, 19)

In the matter of A B of [] in the town of [or the
 sub division of [] in the district of [] in alleged lunatic
 I, the undersigned C D, do hereby certify as follows —
 I am a gazetted medical officer for a medical practitioner declared by Government
 a holder of [] [or declared by [] Provincial Government] to be a medical
 practitioner under Act IV of 1912] and I am in the actual practice of the
 medical profession

[1] Address and description
 [2] To be addressed to the officer or person in charge of the asylum
 [3] Insert residence of patient.
 [4] Insert qualification to practise medicine and surgery registrable in the United Kingdom
 Subs by the V O for "L.G."

(Schedule I.—Forms.)

2. On the day of 19 at [1] in the ^{village}town of [or the sub-division of in the district of [separately from any other practitioner] [?], I personally examined the said A. B. and came to the conclusion that the said A. B. is a lunatic and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz.:—

(a) Facts indicating insanity observed by myself, viz.:—

(b) Other facts (if any) indicating insanity communicated to me by others, viz.:—Here state the information and from whom.

(Sd.) C. D.

(Designation as above.)

FORM 4.

Reception Order in case of Lunatic Soldier.

(See section 12.)

Whereas it appears to me that A. B., a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A. B. into your asylum.

(Sd.) E. F.

(Administrative Medical Officer.)

To [3]

FORM 5.

Reception order in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government).

(See sections 14, 15, 17.)

I, C. D., Presidency Magistrate of [or Commissioner of Police for [or the District Magistrate of or the Sub-divisional Magistrate of or a Magistrate specially empowered by Government under Act IV of 1912] having caused A. B. to be examined

[1] Insert place of examination.
 [2] Omit this where only one certificate is required.
 [3] To be addressed to the person in charge of an asylum duly authorised by Government to receive lunatic Europeans subject to the Army Act.

(Schedule I—Forms)

by D, F, a Medical Officer under the Indian Lunacy Act 1912 and being satisfied that A B [describing him] is a lunatic who was wandering at large [or is a person dangerous by reason of lunacy] [or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment hereby direct you to receive the said A B into your asylum

(SD) C D
(Designation as above)

Dated the _____
To the Officer in charge of the asylum at _____

FORM 6

Same when sent to a licensed asylum

I, C D, [as above down to "care and treatment"] and being satisfied with the engagement entered into in writing by G H of [here insert address and description] who has desired that the said A B may be sent to the asylum at [here insert description of asylum and name of the person in charge] to pay the cost of maintenance of the said A B, in the said asylum, hereby authorize you to receive the said A B into your asylum

(SD) C D
(Designation as above)

Dated the _____
To the person in charge of the asylum at _____

FORM 7

Bond on the making over of a lunatic to the care of relative or friend

(See sections 14, 15, 17)

Whereas A B, son of _____, inhabitant of _____, has been brought up before C D, a Presidency Magistrate for the town of _____ [or the _____ District] [or the _____ Sub-Divisional Magistrate _____, or a Magistrate of the first class specially empowered under _____ of _____

(Schedule I.—Forms.)

Act IV of 1912] and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E. F., son of , inhabitant of , have applied to the Magistrate [or Commissioner of Police], that the said A. B. may be delivered to my care : I, E. F., above named hereby bind myself that on the said A. B. being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others : and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the above named E. F. that he will, on the afore-said A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others ; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

FORM 8.

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care.

(See section 33.)

Whereas A. B., son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C. D., a Presidency Magistrate for the town of [or Commissioner of Police for] [or the District Sub-Divisional Magistrate of , or a Magistrate of the first class specially empowered under Act IV of 1912] under section 14 [or section 15] of Act IV of 1912, and whereas I, E. F., son of , inhabitant of , have applied to the said Magistrate [or Commissioner of Police] that the said A. B. may be delivered to my care and custody :

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from

(Schedule I—Forms)

1912 : Act VII.] Bengal, Bihar and Orissa and Assam Laws

doing injury to himself or to others, and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King Emperor of India the sum of rupees

Dated this

19

day of

(Sd) F F

(Where a bond with sureties is to be executed)—We do hereby

declare ourselves sureties for the abovesaid F F that he will, on the aforesaid A B being delivered to his care and custody, have the said A B properly taken care of and prevented from doing injury to himself or to others, and in case of the said F F making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King Emperor of India the sum of rupees

Dated this

19

day of

(Signature)

SCHEDULE II—[NOTICES REPEALED] Rep by the Second Repealing and Amending Act, 1911 (XVIII of 1911) s 3 and Sch II

THE BENGAL, BIHAR AND ORISSA AND ASSAM LAWS ACT,
1912

ACT NO VII OF 1912.

[26th March 1912]

An Act to make certain provisions regarding the application of the law in force in the Presidency of Fort William in Bengal, the Province of Bihar and Orissa and the Province of Assam

WHEREAS a Governor and an Executive Council have been appointed for the Presidency of Fort William in Bengal,

AND WHEREAS by Proclamation published under Notification No. 290, dated the twenty second day of March 1912, the Governor General in Council, with the sanction of His Majesty, has been pleased to declare and appoint that, on and from the first day of April, 1912, the territory mentioned in Schedule I shall be and continue subject to the said Presidency of Fort William in Bengal;

AND WHEREAS, by Proclamation¹ published under Notification No. 289, dated the twenty-second day of March, 1912, the Governor General, with the sanction of His Majesty, has been pleased to constitute the territory mentioned in Schedule B to be, for the purposes of the Indian Councils Act, 1861², a Pro-
^{24 & 25}vince to which the provisions of that Act touching the making of Laws and Regulations for the peace and good government of the Presidencies of Port St. George and Bombay shall be applicable, and to direct that the said Province shall be called the Province of Bihar and Orissa, and further to appoint a Lieutenant-Governor of that Province;

AND WHEREAS, by Proclamation¹ published under Notification No. 291, dated the twenty-second day of March, 1912, the Governor General in Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule C, which was formerly included within the Province of Eastern Bengal and Assam and to form the same into a Chief Commissionership, to be called the Chief Commissionership of Assam, and further to appoint a Chief Commissioner therefor;

AND WHEREAS it is expedient to make certain provisions regarding the application of the law in force in the territories affected by the said Proclamations;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal, Bihar and Orissa and Assam Laws Act, 1912; and

(2) It shall come into force on the first day of April, 1912.

2. The Proclamations referred to in the preamble shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that such enactment may be expressed to apply or extend to the territories for the time being under a particular administration.

3. All enactments made by any authority in British India, and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments, which, immediately before the commencement of this Act, were in force in, or prescribed for, any of the territory mentioned in Schedule A, Schedule B or Schedule C, shall, in their application to that territory, be construed as if references therein to the authorities, territory or Gazettes mentioned in column 1 of Schedule D were references to the authorities, territory or Gazettes respectively mentioned or referred to opposite thereto in column 2 of that Schedule:

* * * * *

4. [Constitution of Board of Revenue in Bihar and Orissa.] Rep. by the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act I of 1913), s. 7 and Sch. I.

Short title
and com-
menement.
Saving of
territorial
application
of enact-
ments.
Construction
of certain
references
in enact-
ments in
force in
territory
mentioned
in Schedules
A, B and C.

¹ See the Gazette of India Extraordinary of the 22nd March, 1912.
² Rep. and re-enacted by the Government of India Act.
³ The proviso to s. 3 rep. by the Devolution Act, 1920 (35 of 1920), s. 2 and Sch. I.

5. For the purpose of facilitating the application to the territory, or any part thereof, mentioned in Schedule A, Schedule B or Schedule C of any enactment passed before the commencement of this Act, or of any notification, order, scheme, rule, form or by law made under any such enactment,—

(a) any Court may, subject to the other provisions of this Act, constitute the enactment, notification, order, scheme, rule, form or by-law with such alterations, not affecting the substance, as may be necessary or proper to adapt it to the matter before the Court, and

(b) the [Provincial Government] may, by notification in the [Official Gazette], direct by what officer any authority or power shall be exercisable, and any such notification shall have effect as if enacted in this Act

6. Nothing in this Act shall affect any proceeding which, at the commencement thereof, is pending in or in respect of any of the territory mentioned in Schedule A, Schedule B or Schedule C, and every such proceeding shall be continued as if this Act had not been passed

7 and 8. [Amendment of Acts Repeal] *Rep by the Repealing Act, 1938 (1 of 1938), s 2 and Sch*

9. References in this Act, by whatever form of words, to Indian laws in force immediately before the commencement of this Act shall, after the commencement of Part III of the Government of India Act, 1935, be construed as references to those laws as adapted and modified under section 293 of that Act

SCHEDULE A.

(See sections 3, 5 and 6)

THE PROVINCE OF PORT WILLIAM IN BEYAL

Part I

The Chittagong Division, comprising the districts of Chittagong, the Chittagong Hill tracts, Nokhal and Tippera,

the Dacca Division, comprising the districts of Bakarganj, Dacca, Faridpur and Mymensingh,

the Rysshahi Division, comprising the districts of Bogra, Dinajpur, Jalpaiguri, Malda, Pabna, Rysshahi and Kamrupur

Part II

The Burdwan Division, comprising the districts of Bankura, Birbhum, Burdwan, Hooghly, Howrah and Midnapur,

Subs by the A O for 'L.G.'
Subs by the A O for 'Local official Gazette'
It is by the A O

SCHEDULE B.

The districts of Bhagalpur, Monghyr, Purnea and the Southal Parganas, in the Bhagalpur Division ;
the Patna Division, comprising the districts of Gaya, Patna and Shahabad ;
the Tirhut Division, comprising the districts of Champaran, Darbhanga, Muzaffarpur and Saran ;
the Chota Nagpur Division, comprising the districts of Hazaribagh, Manbhum, Palamau, Ranchi and Singhbhum ; and
the Orissa Division, comprising the districts of Angul, Balasore, Cuttack, Puri and Sambalpur.†

SCHEDULE C.

The Assam Valley Districts Division, comprising the districts of Darrang, Garo Hills, Goalpara, Kamrup, Lakhimpur, Nowong and Sibsagar; and the Surma Valley and Hill Districts Division, comprising the districts of Cachar, Khairi and Jaintia Hills, Lushai Hills, Naga Hills and Sylhet.

SCHIEDLE D.

(See section 3.)

Part I.—Construction of enactments, etc., in force in the territory mentioned in Schedule A (the Presidency of Fort William in Bengal).

1	References.	1. The ² Local or Provincial Government of Bengal. 2. The ² Local or Provincial Government of Eastern Bengal and Assam.	} The ³ Provincial Government of ⁴ * Bengal.
2	Constructions.	*	

1 As regards the district of Sambalpur, see the Malkharoda and Gaontha Villages Laws Act, 1923 (22 of 1923).
 2 Subs. by the A. O. for "L. G."
 3 Subs. by the A. O. for "G. in C."
 4 The words "Port William in" rep. by the A. O.

SCHEDULE D—*contd.*

Part I.—*Construction of enactments, etc., in force in the territory mentioned in Schedule A (the Presidency of Fort William in Bengal)—*concl'd.**

1	References.	2
<p>3. The Board of Revenue for Eastern Bengal and Assam.</p>	<p>1 *</p>	<p>The Board of Revenue for Bengal.</p>
<p>4. All officers and official bodies not mentioned in the foregoing clauses 2 to 5 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Part I of Schedule A.</p>	<p>1 *</p>	<p>(a) The respective officers and official bodies who immediately before the commencement of this Act exercised similar functions in the Province of Bengal, or (b) such other officers or official bodies, respectively, as the Provincial Government may, by notification in the [Official Gazette], direct.</p>
<p>7. The local official Gazette (English or Vernacular, as the case may be) of the Government of Eastern Bengal and Assam.</p>	<p>1 *</p>	<p>The [Official Gazette] (English or Vernacular, as the case may be) of the Government of Bengal</p>

Part II.—*Construction of enactments, etc., in force in the territory mentioned in Schedule B (the Province of Bihar and Orissa)*

1	References.	2
<p>8. The [Local or Provincial Government] of Bengal.</p> <p>9. The [Local or Provincial Government] of the Central Provinces.</p>	<p>1 *</p>	<p>The [Provincial Government] of Bihar and Orissa</p>
<p>10. The Board of Revenue for Bengal.</p> <p>11. The Court of Wards of the Central Provinces.</p> <p>12. The Superintendent of Government Wards in the Central Provinces.</p>	<p>1 *</p>	<p>The Board of Revenue for Bihar and Orissa.</p>

controlling Revenue-authority and Chief Commissioner in the General Clauses Act, 1897 (10)

SCHEDULE D—*contd.*Part II.—Construction of enactments, etc., in force in the territory mentioned in Schedule B (the Province of Bihar and Orissa)—*contd.*

1	2
References.	Constructions.
15. The Judicial Commissioner of the Central Provinces.	The High Court of Judicature [in Calcutta].
16. All officers and official bodies not mentioned in the foregoing clauses 8 to 15 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Bengal generally, inclusive of the territory mentioned in Schedule B.	Such officers or official bodies, respectively, as the [Provincial Government] may, by notification in the [Official Gazette], direct.
17. The local official Gazette (English or Vernacular, as the case may be) of the Government of Bengal or the Chief Commissionership of the Central Provinces.	The [Official Gazette] (English or Vernacular, as the case may be) of the Government of Bihar and Orissa.

Part III.—Construction of enactments, etc., in force in the territory mentioned in Schedule C (the Province of Assam).

1	2
References.	Constructions.
18. The [Local or Provincial Government] of Bengal. 19. The [Legal or Provincial Government] of Eastern Bengal and Assam. 20. The Board of Revenue for Bengal. 21. The Board of Revenue for Eastern Bengal and Assam. * * * * *	The [Provincial Government] of Assam.
24. All officers and official bodies not mentioned in the foregoing clauses 18 to 23 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Schedule C.	Such officers or official bodies, respectively, as the [Provincial Government] of Assam may, by notification in the [Official Gazette], direct.

¹ Subs. by the A. O. for "at Port William in Bengal".

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "local official Gazette".

⁴ Items 22 and 23 relating to the Chief Controlling Revenue-authority and Chief Revenue-authority rep. by the A. O.: see now definition in the General Clauses Act, 1897 (10 of 1897).

s. 3 (9a).

⁵ Subs. by the A. O. for "Chief Commissioner".

1912 : Act VII.] Bengal, Bihar and Orissa and Assam Laws
1912 : Act VIII.] Wild Birds and Animals Protection

SCHEDULE D—*concl*

Part III—Construction of enactments, etc, in force in the territory mentioned in
Schedule G (the Province of Assam)—*concl*

1	References
2	Constitutions.
2a The Chief Commissioner of Assam	The territory mentioned in Schedule C
2b The local official Gazette (English or Vernacular as the case may be) of the Government of Bengal or the Government of Eastern Bengal and Assam	The [Official Gazette] (English or Vernacular as the case may be) of the Chief Commissioner of Assam

SCHEDULE E—*Rep by the Repaling Act, 1938 (I of 1938) s 2 and Sch*

THE WILD BIRDS AND ANIMALS PROTECTION ACT, 1912

ACT NO VIII OF 1912

[18th September 1912.]

An Act to make better provision for the protection and preservation of certain wild birds and animals
WHEREAS it is expedient to make better provision for the protection and preservation of certain wild birds and animals, It is hereby enacted as follows—

1 (1) This Act may be called the Wild Birds and Animals Protection Act, 1912, and

(2) It extends to the whole of British India, including British Baluchistan

the Southern Parganas and the Fargana of Spiti
2 (1) This Act applies, in the first instance, to the birds and animals specified in the Schedule, when in their wild state

(2) The [Provincial Government] may, by notification¹ in the [Official Gazette], apply the provisions of this Act to any kind of wild bird or animal

¹ Subs. by the A O for local official Gazette

² For Statement of Objects and Reasons see Gazette of India 1912, Pt 2, for Report of Select Committee, see ibid, 1912, Pt 1, p 173, and for Proceedings in Council, see ibid, 1912, Pt 1 pp 57 and 631

The Act has been amended in its application to the U R by the Wild Birds and Animals Protection (U R Amendment) Act, 1934 (U R 13 of 1934) and in its application to the C P by the Wild Birds and Animals Protection (C P Amendment) Act 1935 (C P 7 of 1935)

³ Subs. by the A O for L G
⁴ For such a notification in Coorg, see Coorg District Gazette 1913 Pt 1, p 150, in the U R, see U R Gazette, 1914, Pt 1, p 169, and in Madras, see Mad R and O, 1923, Vol. I, p 439

other than those specified in the Schedule, which, in its opinion, it is desirable to protect or preserve.

3. The [Provincial Government] may, by notification² in the [Official Gazette], declare the whole year or any part thereof to be a close time throughout the whole or any part of its territories for any kind of wild bird or animal to which this Act applies, or for female or immature wild birds or animals of such kind; and, subject to the provisions hereinafter contained, during such close time, and within the areas specified in such notification, it shall be unlawful—

(a) to capture any such bird or animal, or to kill any such bird or animal which has not been captured before the commencement of such close time;

(b) to sell or buy, or offer to sell or buy, or to possess, any such bird or animal which has not been captured or killed before the commencement of such close time, or the flesh thereof;

(c) if any plumage has been taken from any such bird captured or killed during such close time, to sell or buy, or to offer to sell or buy, or to possess, such plumage.

4. (1) Whoever does or attempts to do, any act in contravention of section 3, shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder shall, on every subsequent conviction, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

5. (1) When any person is convicted of an offence punishable under this Act, the convicting Magistrate may direct that any bird or animal in respect of which such offence has been committed, or the flesh or any other part of such bird or animal, shall be confiscated.

(2) Such confiscation may be in addition to the other punishment provided by section 4 for such offence.

6. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence against this Act.

7. Where the [Provincial Government] is of opinion that, in the interests of scientific research, such a course is desirable, it may grant to any person a license, subject to such restrictions and conditions as it may impose, entitling the holder thereof to do any act which is by section 3 declared to be unlawful.

8. Nothing in this Act shall be deemed to apply to the capture or killing of a wild animal by any person in defence of himself or any other person, or to the capture or killing of any wild bird or animal in *bond fide* defence of property.

9. [Repeal.] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

¹ Subs. by the A. O. for "L. G."
² For such a notification in Madras, see Mad. R. and O., 1923, Vol. I, p. 439.
³ Subs. by the A. O. for "local official Gazette".

Close time.

Penalties.

Confiscation.

Magistrate of the second class shall try any offence against this Act.

Power to grant exemption.

Savings.

THE SCHEDULE

- (i) Bustards, ducks, plovers, quail, partridges, peafowl pheasants, pigeons, quail and grouse painted snipe spur fowl woodcock, herons, rollers, and kingfishers
(ii) Antelopes, asses, horses, buffaloes, deer, gazelles, goats, hares, oxen rhinoceroses¹ and sheep

THE DELHI LAWS ACT, 1912

Act No XIII OF 1912 :

[18th September 1912]
An Act to provide for the application of the law in force in the Province of Delhi and for the extension of other enactments thereto

WHEREAS by Proclamation² published in Notification No 911 dated the seventeenth day of September 1912 the Governor General in Council with the sanction and approbation of the Secretary of State for India has been pleased to take under his immediate authority and management the territory mentioned in Schedule A, which was formerly included within the Province of the Punjab, and to provide for the administration thereof by a Chief Commissioner as a separate Province to be known as the Province of Delhi, And whereas it is expedient to provide for the application of the law in force in the said territory, and for the extension of other enactments thereto, It is hereby enacted as follows —

1. (1) This Act may be called the Delhi Laws Act, 1912 and (2) It shall come into force on the first day of October, 1912

2. The Proclamation referred to in the preamble shall not be deemed to have effected any change in the territorial application of any enactment notwithstanding that such enactment may be expressed to apply or extend to the territories for the time being under any particular administration

3. All enactments made by any authority in British India and all notifications, orders, schemes, rules, forms and by laws issued, made or prescribed under such enactments which immediately before the commencement of this Act were in force in, or prescribed for, any of the territories mentioned in Schedule A, shall in their application to that territory be construed

¹ and passed at the same meeting
² For Proceedings in Council relating to the Bill see Gazette of India, 1912, Pt. VI, p. 635
³ See Gazette of India, 1912, Extraordinary, p. 17

as if references therein to the authorities, or gazette mentioned in column I of Schedule B were references to the authorities, or gazette respectively mentioned or referred to opposite thereto in column 2 of that Schedule :

1* * * * *

Powers of
Courts and
Provincial
Government
for purposes
of facilitating
application
of enact-
ments.

4. For the purpose of facilitating the application to the territory mentioned in Schedule A or any part thereof of any enactment passed before the commencement of this Act or of any notification, order, scheme, rule, form or by-law issued, made or prescribed under any such enactment—

(1) any Court may, subject to the other provisions of this Act, construe the enactment, notification, order, scheme, rule, form or by-law with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the Court, and

(2) the² [Provincial Government] may, subject to the other provisions of this Act, by notification³ in the⁴ [Official Gazette] direct by what Officer any power or duty shall be exercised or discharged, and any such notification shall have effect as if enacted in this Act.

Vesting of
powers of
Officers in
single Officer.

Pending
proceedings.

5. (1) A notification issued under section 4, sub-section (2), may direct that any powers or duties vested in separate Officers may be consolidated and vested in, and discharged by, a single Officer.

(2) Where by such a notification appellate powers are consolidated and vested in a single Officer, the period of limitation for the consolidated appeal shall be the longest period provided in the case of an appeal to any of the Officers whose powers are so consolidated.

6. Nothing in this Act shall affect any proceeding which at the commencement thereof is pending in respect of any of the territory mentioned in Schedule A, and every such proceeding shall be continued as if this Act had not been passed :

Provided that all proceedings which at the commencement of this Act are pending before the Commissioner of the Division or any other authority within the territory mentioned in Schedule A shall be transferred to, and disposed of by, such authorities in the Province of Delhi as the² [Provincial Government] may, by notification³ in the⁴ [Official Gazette], direct.

¹ proviso to s. 3 rep. by the A. O.

² Subs. by the A. O. for "L. G."

³ For such notification as to appellate powers of the Commissioner and Financial Commissioner under the Punjab Tenancy Act, 1887 (Punjab 16 of 1887), and Punjab Land Revenue Act, 1887 (Punjab 17 of 1887), see Gazette of India, 1912, Pt. I, p. 1104, and as Registrar of

Co-operative Societies, see *ibid.*, p. 1105.

⁴ Subs. by the A. O. for "Gazette of India".

⁵ For such a notification, see *ibid.*

7. The '[Provincial Government] may, by notification² in the '[Official Paper to extend with such restrictions and modifications as '[it] thinks fit to actments in other parts of British India with modifications and restrictions.

SCHEDULE A

(See section 3)

THE PROVINCE OF DELHI³

That portion of the District of Delhi comprising the Tahsil of Delhi and the police station of Alabrah

SCHEDULE B

(See section 3)

1	Reference
11	The '[Provincial Government] of the Punjab
10	The Chief Secretary to Government
9	The Commissioner of the Division
8	The Commissioner of Revenue
7	The Financial Commissioner
6	The Chief Customs Authority
5	The '[Provincial Government] of the Punjab
4	The Chief Secretary to Government
3	The Commissioner of the Division
2	The Commissioner of Revenue
1	The Financial Commissioner

¹ Sube by the 1 G for G G in C
² For such notifications see Gen II and O 1 of IV, pp 379 387
³ Sube by the 1 G for Gazette of India
⁴ Sube by the 1 G for be
⁵ Sube by the Delhi Laws Act, 1912 (7 of 1912) s. 7, for the territory mentioned in Schedule A
⁶ Sube by the 1 G for Chief Commissioner

12. All officers and official bodies not mentioned in the foregoing clauses except the Treasurer of Charitable Endowments whose authority extended immediately before the commencement of this Act over the territory mentioned in Schedule A.		* * *
Reference.	1	
Construction.	2	Such officials or official bodies respectively as the ¹ [Provincial Government] may, by notification ² in the ³ [Official Gazette] direct.

THE OFFICIAL TRUSTEES ACT, 1913.

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¹ Subs. by the A. O. for "L. G."
² For such a notification, see Gazette of India, 1912, Pt. I, p. 1109.
³ Subs. by the A. O. for "Gazette of India".
⁴ Item 13 was rep. by the A. O.

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30. Rules.
31. [Repealed.]
32. Saving of provisions of Indian Registration Act, 1908.
- 32A. Saving.
33. [Repealed.]

THE SCHEDULE—[Repealed.]

ACT NO. II OF 1913.¹

[27th February, 1913.]
An Act to consolidate and amend the Law constituting the office of Official Trustee.

WHEREAS it is expedient to consolidate and amend the law constituting the office of the Official Trustee; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Official Trustees Act, 1913.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also to all² British subjects in Indian States.]

(3) It shall come into force on such date³ as the⁴ Central Government, by notification in the⁵ Official Gazette, may direct.

text,—

6[(1) "Government" or "the Government" means in relation to any Province, the Provincial Government, and, in relation to British subjects in Indian States, the Central Government:]

Interpreta-
tion clause.

Short title,
extent and
commence-

¹ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 202; for Report of Select Committee, see *ibid*, 1913, Pt. V, p. 19; and for Proceedings in Council, see *ibid*, 1912, Pt. VI, p. 699 and *ibid*, 1913, Pt. VI, pp. 15 and 28.
² Subs. by the A. O. for "British and Indian Subjects of His Majesty in the territories of Native States in India".
³ The 1st April, 1914, see Gen. R. & O., Vol. IV, p. 388.
⁴ Subs. by the A. O. for "G. G. in C."
⁵ Subs. by the A. O. for "Gazette of India".
⁶ Subs. by the A. O. for original definition.

(Part I—Preliminary Part II—The Office of Official Trustee)
1(2) "High Court" means—

- (a) in relation to Bengal, Assam, and the Andaman and Nicobar Islands, the High Court at Calcutta,
(b) in relation to Madras and Coorg, the High Court at Madras, the High Court at Bombay,
(c) in relation to Bombay and British Baluchistan, the High Court at Bombay,
(d) in relation to the United Provinces and Ajmer Merwara, the High Court at Allahabad,
(e) in relation to the Punjab and Delhi, the High Court at Lahore,
(f) in relation to the Provinces of Bihar and Orissa, the High Court at Patna,
(g) in relation to the Central Provinces and Berar, the High Court at Nagpur,
(h) in relation to Sind, the Judicial Commissioner's Court,
(i) in relation to the North West Frontier Province, the Judicial Commissioner's Court
(j) in relation to British subjects in any Indian State, that one of the aforesaid courts which the Central Government may from time to time notify in this behalf]

2* * * * *
(f) "Prescribed" means prescribed by rules under this Act
2* * * * *

3(8) "Division" means the Province or State or group of States for which an Official Trustee has been appointed under this Act]
3. For the purposes of this Act the High Court * * * shall have extent of jurisdiction of High Courts.

PART II

THE OFFICE OF OFFICIAL TRUSTEE

4. (1) The Provincial Government for each Province, and the Central Government for British subjects in any Indian State or group of Indian States, shall appoint an Official Trustee
Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Official Trustee for two or more Divisions]

* Subs. by the 1 O for original definition
* Cls. (2) (3) (6) and (7) defining "Official Gazette," "Presidency of Bengal," "Presidency of Madras," "Presidency of Bombay," "Presidency of Sind," and "Presidency of the Government," were rep. by the 1 O
* Ins. by the 1 O
* The words "at a Presidency town" rep. by the 1 O
* Subs. by the 1 O for "Presidency town"
* Subs. by the 1 O for the original sub-section.

(Part II.—The Office of Official Trustee. Part III.—Rights, Powers, Duties and Liabilities of Official Trustee.)

(2) No person shall be appointed to the office of Official Trustee ^{1*} who is not—

- (a) a Barrister; or
- (b) an Advocate, Attorney or Vakil enrolled by a High Court; or
- (c) a person holding the office of Deputy Administrator General at the commencement of this Act; ²or
- (d) in the case of a Province other than Bengal, Madras or Bombay, a person already in the service of the Crown.

* * * * *

5. The Government may appoint a Deputy or Deputies to assist the Official Trustee; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and, when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Official Trustee.

6. The Official Trustee shall be a corporation sole by the name of the Official Trustee of the ¹[Division] for which he is appointed and, as such Official Trustee, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE.

7. (1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

- (a) act as an ordinary trustee;
- (b) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent.

¹ The words "of any of the said Presidencies" rep. by the A. O.

² Ins. by the A. O.

³ Sub-section (3) rep. by the A. O.

⁴ Subs. by the A. O. for "Presidency".

General powers and duties of Official Trustee.

Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.

Appoint-ment and powers of Deputy Official Trustee.

(Part III—Rights, Powers, Duties and Liabilities of Official Trustee)

(5) The Official Trustee shall not save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business

(6) The Official Trustee shall not administer the estate of a deceased person unless he is expressly appointed sole executor of, and sole trustee under the will of such person

(7) The Official Trustee shall always be sole trustee and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person

(8) Any person intending to create a trust other than a trust which Official Trustee may be appointed with the consent of the Official Trustee shall not save as provided by any rules made under this Act, create the trust and with the consent of the Official Trustee appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee

(9) Upon such appointment the property subject to the trust shall vest in such Official Trustee and shall be held by him upon the trusts declared in such instrument

9 When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will the executor of the will of Official Trustee shall after obtaining probate of the will of Official Trustee in the prescribed manner the contents of which shall be held by him upon the trusts expressed in the said will

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee

10 (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act and there is no trustee within the local limits of the ordinary or extraordinary jurisdiction of the High Court willing or capable to act in the trust the High Court may on application make an order for the appointment of a trustee

(2) Upon such order such property shall vest in the Official Trustee and he shall be held by him upon the trusts as the same was held previously to such order in the previous trustee or trustee or trustees (if any) shall exempt

Subs by the Hon'ble and Amending Act 1913 (Act 1913) s. 2 and 3 for a trustee

(Part III.—Rights, Powers, Duties and Liabilities of Official Trustee.)

from liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the provisions of the Trustees' and Mortgagees' Powers Act, 1866, or the Indian Trusts Act, 1882. XXII of 1866

11. (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him. (2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

12. (1) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or executor or administrator by whom such legacy or share is payable or transferable or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee. (2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee. 13. (1) No Official Trustee shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act. (2) No Official Trustee or Deputy Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

14. The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust.

Power of private trustees to appoint Official Trustee to be trustee of property.

Executor or administrator may pay to Official Trustee legacy, share, etc., of infant or lunatic.

Official Trustee not to be required to give bond or security.

Entry of Official Trustee not to constitute notice of a trust.

(Part III—Rights, Powers, Duties and Liabilities of Official Trustee
Part IV—Fees)

15. (1) The revenues of the Government * shall be liable to make Liability of Government, good all sums required to discharge any liability which the Official Trustee, except if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the revenues of the Government, be subject to any liability.

(2) Nothing in sub section (1) shall be deemed to render the revenues of the Government * or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act.

16. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply Notice of suit not required in certain cases. to any suit against the Official Trustee in which no relief is claimed against him personally.

PART IV

FEES

17. (1) There shall be charged in respect of the duties of the Official Trustee such fees, whether by way of percentage or otherwise, as the Govern-

ment may prescribe.

Provided that in the case of a trust accepted by the Official Trustee before the commencement of this Act the fees prescribed under this section shall not exceed the fees leviable in respect of such trust under the Official Trustee Act, 1864, as subsequently amended.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sums as Government may determine to be required to insure the revenues of the Government * against loss under this Act).

18. (1) All expenses which might be retained or paid out of the trust fund if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be returned or paid in like manner as and in addition to such expenses.

* The words 'of India' rep. by the Official Trustees and Administrator General's Acts
by the A. O.
913 (2 of 1913)
The words 'of India' rep. by the Official Trustees and Administrator General's Acts
Amendment Act, 1922 (21 of 1922), s. 4

(Part IV.—Fees. Part V.—Audit.)

(2) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government.*

PART V.

AUDIT.

19. (1) The accounts of the Official Trustee shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts, and shall forward to Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing—

- (a) whether the accounts contain a full and true account of everything which ought to be contained therein, and
- (b) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and
- (c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder ;

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

20. (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908,

- (a) to summon any person whose presence he may think necessary to attend him from time to time, and
- (b) to examine any person, on oath to be by him administered, and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person, and
- (d) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined shall be deemed to have committed

* The words " of India " rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 4.

Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.

Auditor's power to summon witnesses and to call for documents.

V of

(Part V.—Audit Part VI.—Miscellaneous)

an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to Government.

21. The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the Government and shall be defrayed in the prescribed manner.

22. Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Indian Trusts Act, 1882, shall affect the provisions of this section.

PART VI

MISCELLANEOUS

23. When any moneys payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after the commencement of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government :—

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

24. (1) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government shall pay to the claimant the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the Government and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings.

[Provided that nothing in this section affects any option afforded to a claimant by section 179 of the Government of India Act, 1913.]

The words of India Act, 1919, by the Official Trustees and Administrator General & Acts Amendment Act 1922 (21 of 1922) s. 4
 Subs by the A O
 Ins by the A O

(Part VI.—Miscellaneous.)

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

25. The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the interest or produce thereof.

26. Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof.

27. Any order made by a High Court under this Act shall have the same effect as a decree.

28. The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure—

(a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him; and

(b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

29. (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(a) the original trustee (if any); or
 (b) any other lawfully appointed trustee; or
 (c) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer: Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

30. (1) The Government shall make rules¹ for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the accounts to be kept by the Official Trustee and the audit and inspection thereof;

¹ For rules made by the G. G. in C. for the former Presidency of Bengal, see Gen. R. and O., Vol. IV, p. 393, and for other provinces see local R. and O.

Power of
High Court
to make
orders in
respect of
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vested in
Official
Trustee.
Who may
apply for
order under
Act.
Order
of Court to
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General
powers of
administration.

Transfer
of trust pro-
perty by
Official
Trustee
to original
trustee or
any other
trustee.

Rules.

(Part VI—Miscellaneous)

- (b) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee,
- (c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required,
- (d) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents,
- (e) the realization of the cost of preparing any such statements, schedules or other documents,
- * * * *
- (f) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed,
- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,
- (h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination,
- (i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business, and
- (j) any matter in this Act directed to be prescribed

(3) Rules made under the provisions of this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act

31. [Division of Presidency into Provinces] *Repealed by the A O*

32. Nothing contained in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908

32A. The amendments³ of this Act which come into force on the commencement of Part III of the Government of India Act, 1935, shall not affect any legal proceedings pending in any court or be construed as automatically transferring any property from any Official Trustee to any other Official Trustee but nothing in this section shall be construed as

¹ Cl (cc), which was ins. by the Repealing and Amending Act, 1914 (10 of 1914), was repealed by the Declaration of Records Act, 1917 (5 of 1917), s. 6 and Sch. 1

² s. 32A was ins. by the A O

³ i.e., the amendments made by the A O which came into force on the 1st April, 1937, simultaneously with Part III of the G. O. I. Act, 1935.

Official Trustees. [1913 : Act II.
(Part VI.—Miscellaneous.)

Administrator General. [1913 : Act III.

preventing a transfer of any such property in accordance with any of the other provisions of this Act.]
33. [Repeals.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

THE SCHEDULE.—[ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

THE ADMINISTRATOR GENERAL'S ACT, 1913.

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THE SCHEDULE—[Repealed]ACT NO. III OF 1913.¹

[27th February, 1913]
 An Act to consolidate and amend the law relating to the office and duties of Administrator General.

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator General, It is hereby enacted as follows—

PRELIMINARY

1. (1) This Act may be called the Administrator General's Act, 1913

¹ For Statement of Objects and Reasons see Gazette of India, 1912, Pt. V, p. 153 for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 3 and for Proceedings in Council, see *ibid.*, 1912, Pt. V, p. 697 and *ibid.*, 1913, Pt. V, pp. 14, 28 and 61

SECTIONS.

29. No security nor oath to be required from Administrator General.
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30. Power to examine on oath.

(e) Grant of Certificates.

31. In what case Administrator General may grant certificate.
32. Grant of certificate to creditors and power to take charge of certain
estates.

33. Administrator General not bound to grant certificate unless satisfied
of claimant's title, etc.

34. Effect of certificate.

35. Revocation of certificate.

36. Surrender of revoked certificate.

37. Administrator General not bound to take out administration on
account of assets for which he has granted certificate.

38. Transfer of certain assets from British India to executor or adminis-
trator in country of domicile for distribution.

(f) Liability.

39. Liability of Government.
40. Creditors' suits against Administrator General.
41. Notice of suit not required in certain cases.

PART IV.

FEES.

42. Fees.
43. Disposal of fees.

PART V.

AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

44. Audit of Administrator General's accounts.
45. Auditors to examine accounts and report to Government.
46. Power of auditors to summon and examine witnesses and to call for
documents.
47. Costs of audit, etc.

(Part I—Preliminary)

PART VI

MISCELLANEOUS

SECTIONS

- 48 General powers of administration
 49 Power of person beneficially interested to inspect Administrator
 50 General's accounts, etc. and take copies
 51 Power to make rules
 52 False evidence
 53 Assets unclaimed for twelve years to be transferred to Government
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 56 Succession Act and Companies Act not to affect Administrator General and saving of provisions of Presidency Police Acts as to petty estates
 57 Order of Court to be equivalent to decree
 58 Provision for administration by Consular Officer in case of death in certain circumstances of foreign subject
 59 Saving of provisions of Indian Registration Act 1908
 59A Saving
 60 [Repealed]

THE SCHEDULE—[Repealed]

ACT NO III OF 1913.¹

[27th February, 1913]
 An Act to consolidate and amend the law relating to the office and duties of Administrator General
 Whereas it is expedient to consolidate and amend the law relating to the office and duties of Administrator General, It is hereby enacted as follows—

PART I

PARTIALITY

1. (1) This Act may be called the Administrator General's Act, 1913

Short title
 extent and
 commencement.

¹ For Statement of Objects and Reasons see Gazette of India, 1912, Pt. V, p. 153, for Report of Select Committee see ibid. 1913 Pt. V, p. 3 and for Proceedings in Council see ibid., 1912 Pt. V, p. 697 and ibid., 1913 Pt. V, pp. 14, 23 and 64.

(Part I.—Preliminary.)

(2) It extends to the whole of British India, including the Sonthal Parganas and British Baluchistan, and applies also to all ¹[British subjects in Indian States.]

(3) It shall come into force on such date² as the ³[Central Government] may, by notification in the ⁴[Official Gazette], direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "assets" means all the property, moveable and immoveable, of a deceased person, which is chargeable with, and applicable to, the payment of his debts and legacies, or available for distribution among his heirs and next-of-kin :

(2) "exempted person" means an Indian Christian, a Hindu, Muhammadan, Parsi or Buddhist, or a person exempted under section 332 of the Indian Succession Act, 1865⁵, from the operation of that Act :

(3) "Government" or "the Government" means, in relation to any Province, the Provincial Government, and in relation to British subjects in Indian States, the Central Government :

(4) "Indian Christian" means a Native of India who is or in good faith claims to be of unmixt Asiatic descent, and who professes any form of the Christian religion :

(5) "letters of administration" includes any letters of administration, whether general or with a copy of the will annexed, or limited in time or otherwise :

(6) "next-of-kin" includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased :

(8) "prescribed" means prescribed by rules under this Act :

8[(12) "High Court" means—

(a) in relation to Bengal, Assam and the Andaman and Nicobar Islands, the High Court at Calcutta ;

(b) in relation to Madras and Coorg, the High Court at Madras ;

(c) in relation to Bombay and British Baluchistan, the High Court at Bombay ;

¹ Subs. by the A. O. for "British and Indian subjects of His Majesty in the territories of Native States in India".

² The 1st April, 1914, see Gen. R. and O., Vol. IV, p. 406.

³ Subs. by the A. O. "G. in C."

⁴ Subs. by the A. O. for "Gazette of India".

⁵ See now the Indian Succession Act, 1925 (39 of 1925), s. 3.

⁶ Subs. by the A. O. for the original clause.

and Madras, Presidency and Revenues of the Govt., respectively, were rep. by the A. O. Cl. (11) had been ins. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 5.

⁸ Cls. (12) and (13) were ins. by the A. O.

(Part I—Preliminary Part II—The Office of Administrator General)

- (d) in relation to the United Provinces and Ajmer Merwara, the High Court at Allahabad,
- (e) in relation to the Punjab and Delhi, the High Court at Lahore,
- (f) in relation to the Provinces of Bihar and Orissa, the High Court at Patna,
- (g) in relation to the Central Provinces and Berar, the High Court at Nagpur,
- (h) in relation to Sind, the Judicial Commissioner's Court in relation to the North West Frontier Province the Judicial Commissioner's Court, and
- (j) in relation to British subjects in any Indian State, that one of the aforesaid courts which the Central Government may from time to time notify in this behalf
- (13) "Division" means the Province or State or group of States for which an Administrator General has been appointed under this Act]

PART II

THE OFFICE OF ADMINISTRATOR GENERAL

- 3 [(1) The Provincial Government for each Province and the Central Government for British subjects in any Indian State or group of Indian States, shall appoint an Administrator General
- Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Administrator General for two or more Divisions]
- (2) No person shall be appointed to the office of Administrator General
- * who is not—

- (a) a Barrister, or
- (b) an Advocate Attorney or Vakil enrolled by a High Court, or
- (c) a person holding the office of Deputy Administrator General at the commencement of this Act or
- (d) in the case of a Province other than Bengal, Madras or Bombay, a person already in the service of the Crown]

- 4 The Government may appoint a Deputy or Deputies to assist the Administrator General, and any Deputy so appointed shall, subject to the control of the Government and the General or special orders of the Administrator General, be competent to discharge any of the duties and to exercise the powers of the Administrator General

Subs by the 1 0 for original sub section (1)
 The words of any of the said President's rep by the 1 0
 Sub section (2) rep by the 1 0

(Part II.—The Office of Administrator General. Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

any of the powers of the Administrator General, and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Administrator General.

5. The Administrator General shall be a corporation sole by the name of the Administrator General of the [Division] for which he is appointed and, as such Administrator General, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF THE ADMINISTRATOR GENERAL.

(a) Grants of Letters of Administration and Probate.

6. So far as regards the Administrator General of any [Division], the High Court² * * * shall be deemed to be a Court of competent jurisdiction for the purpose of granting probate or letters of administration under any law for the time being in force wheresoever within the [Division] the estate to be administered is situate.

7. Any letters of administration, which are granted after the commencement of this Act by the High Court³ * * * shall be granted to the Administrator General of the [Division] unless they are granted to the next-of-kin of the deceased.

¹ Subs. by the A. O. for "Presidency".
² The words "at the Presidency-town," rep. by the A. O.
³ The words "at any Presidency-town," rep. by the A. O.

(Part III—Rights, Powers, Duties and Liabilities of the Administrator General)

8. The Administrator General of the [Division] shall be deemed by all Administrators in the [Division] to have a right to letters of administration other than letters *pendente lite* in preference to that of—

- (a) a creditor, or
- (b) a legatee other than an universal legatee, or
- (c) a friend of the deceased

9. If any person, not being an exempted person, has died leaving within [Division] assets exceeding the value of [two thousand] rupees,

and if no person to whom any Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such [Division] for probate of his will, or for letters of administration of his estate,

the Administrator General of the [Division] in which such assets are shall, subject to any rules made by the Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court * * * letters of administration of the estate of such person

10. Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at a Presidency town, the Court, on being satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets unless letters of administration of the estate of such person are granted, may upon the application of the Administrator General or of any person interested in such assets or in the due administration thereof, make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit, directing the Administrator General to apply for letters of administration of the estate of such person

Provided that, in the case of an application being made under this section for letters of administration of the estate of an exempted person, the Court may refuse to grant letters of administration, if it is satisfied that such grant is unnecessary for the protection of the assets, and in such case the Court shall make such order as to the costs of the application as it thinks fit

* Subs by the A O for Presidency towns by the Administrator General's (Amendment) Act, 1926 (22 of 1926), s. 2, for "one thousand".
The words "at the Presidency towns" rep by s 2 O

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

11. (1) Whenever any person has died leaving assets within the local limits of the ordinary civil jurisdiction of any of the said High Courts, and such Court is satisfied that there is no person immediately available, who is legally entitled to the succession to such assets, or that danger is to be apprehended of misappropriation, deterioration or waste of such assets, before it can be determined who may be legally entitled to the succession thereto, or whether the Administrator General is entitled to letters of administration of the estate of such deceased person, the Court may, upon the application of the Administrator General or of any person interested in such assets, or in the due administration thereof, forthwith direct the Administrator General to collect and take possession of such assets, and to hold, deposit, realize, sell or invest the same according to the directions of the Court, and in default of any such directions according to the provisions of this Act so far as the same are applicable to such assets. (2) Any order of the Court made under the provisions of this section shall entitle the Administrator General,

(a) to maintain any suit or proceeding for the recovery of such assets, and

(b) if he thinks fit, to apply for letters of administration of the estate of such deceased person, and

(c) to retain out of the assets of the estate any fees chargeable under rules made under this Act, and to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

12. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10, or section 11, any person appears and establishes his claim—

(a) to probate of the will of the deceased; or
(b) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator General the costs of any proceedings taken by him, under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof.

13. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10, or section 11, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next-of-kin of the deceased, within such period as to the Court seems reasonable,

or if a person who has established his claim to a grant of letters of administration as next-of-kin of the deceased fails to give such security as may be required of him by law,

the Court may grant letters of administration to the Administrator General.

Power to direct Administration to collect and hold assets until right of succession or administration is determined.

Grant of letters of administration to Administrator General under sections 9, 10 and 11. Grant of Administration taken by Administrator General in proceedings the course of appearing in person to administration to establish his claim—

(Part III—Rights, Powers, Duties and Liabilities of the Administrator General)

14. Nothing in this Act shall be deemed to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased

(b) *Estates of Persons subject to the Army Act [or the Air Force Act]*

15 Nothing in this Act shall be deemed to affect the provisions of the Regimental Debts Act, 1893 :

16. It shall not be necessary for the Administrator General to take out letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Regimental Debts Act, 1893, if the value of such estate does not on the date when such administration is committed to him exceed rupees one thousand but he shall have the same power in regard to such estate as he would have had if letters of administration had been granted to him

17. If the Administrator General applies in accordance with the provisions of the Regimental Debts Act 1893 for letters of administration of the estate of any person subject to the Army Act [or the Air Force Act] the Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with the provisions of the Regimental Debts Act, 1893 :

18 If an executor or next of kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto establishes to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted in accordance with the provisions of this Act to the Administrator General may be revoked and probate or letters of administration may be granted to such executor or next of kin as the case may be

Provided that no letters of administration granted to the Administrator General shall be revoked for the cause aforesaid except in cases in which a

(c) *Revocation of Grants*

1937

1937

1937

(Part III — Rights Powers, Duties and Liabilities of the Administrator General)

(ii) the names and addresses of the surviving next of kin of the deceased if known

(iii) the particulars and value of the assets likely to come into the hands of the petitioner

(iv) particulars of the liabilities of the estate if known

1[23 All probates or letters of administration granted to any Administrator General shall be granted to him by that name]

Name in which probate or letters to be granted

24 Probate or letters of administration granted by the High Court * * * * to the Administrator General of any 2[Division] shall have effect over all the assets of the deceased throughout such 3[Division] and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator General

Effect of probate or letters granted to Administrator General.

Provided that the High Court may direct by its grant that such probate or letters of administration shall have like effect throughout one or more of the other 4[Divisions]

Whenever a grant is made by a High Court to the Administrator General with such effect as last aforesaid the Court shall send to the other High Courts a certificate that such grant has been made and such certificate shall be filed by the Courts receiving the same

5[1 grant made by the High Court at Rangoon before the 6 separation of Burma from India shall have the same effect for the purposes of this section as it would have had if the separation had not taken place]

25 (1) Any private executor or administrator may with the previous consent of the Administrator General of the 3[Division] in which any of the assets of the estate in respect of which such executor or administrator has obtained probate or letters of administration are situate by an instrument in writing under his hand notified in the Official Gazette transfer the assets of the estate vested in him by virtue of such probate or letters to the Administrator General by that name or any other sufficient description

Transfer by private executor or administrator of interest under probate or letters

(2) As from the date of such transfer the transferor shall be exempt from all liability as such executor or administrator as the cases may be except in respect of acts done before the date of such transfer and the Administrator General shall have the rights which he would have had and be subject to the liabilities to which he would have been subject if the probate or letters of administration as the case may be had been granted to him by that name at the date of such transfer

1 Subs. by the A.O. for the original section

2 The words "at any Presidency town" replaced by the A.O.

3 Subs. by the A.O. for "Presidency"

4 Subs. by the A.O. for "Presidencies"

5 Ins. by the A.O.

6 Burma was separated from India on the 1st April 1937

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

Distribution
of assets.

26. (1) When the Administrator General has given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of.

(2) He shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator General shall affect him unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay.

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Administrator General and the date of the final decision of the Administrator General on such claim shall be excluded.

Appointment
of Official
Trustee as
trustee of
assets after
completion
of adminis-
tration.

27. (1) When the Administrator General has, so far as may be, discharged all the liabilities of an estate administered by him, he shall notify the fact in the Official Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the Government, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

(2) Upon such appointment such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act, 1913, and shall be held by him upon the same trusts II of 1913 as the same were held immediately before such appointment.

Power for
High Court
to give direc-
tions regard-
ing adminis-
tration of
estate.

28. (1) The High Court¹ * * * may, on application made to it, give to the Administrator General of the ²[Division] any general or special directions as to any estate in his charge or in regard to the administration of any such estate.

(2) Applications under sub-section (1) may be made by the Administrator General or any person interested in the assets or in the due administration thereof.

No security
nor oath to
be required
from Ad-
ministrator
General.

29. (1) No Administrator General shall be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him by that name.

¹ The words "at the Presidency-town" rep. by the A. O.

² Subs. by the A. O. for "Presidency".

(Part III — Rights, Powers Duties and Liabilities of the Administrator General)

(2) No Administrator General or Deputy Administrator General shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act and if the facts stated in any such petition are not within the Administrator General's own personal knowledge the petition may be subscribed and verified by any person competent to make the verification

Manner in which petitions to be verified by Administrator General and his Deputy

(3) The entry of the Administrator General by that name in the books of a Company shall not constitute notice of a trust and a Company shall not be entitled to object to enter the name of the Administrator General on its register by reason only that the Administrator General is a corporation and in dealing with assets the fact that the person dealt with is the Administrator General shall not of itself constitute notice of a trust

Entry of Administrator General not to constitute notice of a trust

30 The Administrator General may whenever he desires for the purposes of this Act to satisfy himself regarding any question of fact examine upon oath (which he is hereby authorised to administer) any person who is willing to be so examined by him regarding such question

Power to examine on oath

(e) Grant of Certificates

31 Whenever any person has died leaving assets within any ¹[Division] and the Administrator General of such ¹[Division] is satisfied that such is its excluding any sum of money deposited in a Government Savings Bank or in any Provident Fund to which the provisions of the Provident Funds Act 1897² apply did not at the date of death exceed in the whole ³[two thousand] rupees—in value he may after the lapse of one month from the death if he thinks fit or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased grant to any person claiming other wise than as a creditor to be interested in such assets or in the due administration thereof a certificate under his hand entitling the claimant to receive the assets therein mentioned left by the deceased within the ¹[Division] to a value not exceeding in the whole ³[two thousand] rupees

In what case Administrator General may grant certificate

Provided that no certificate shall be granted under this section—

- (i) where probate of the deceased's will or letters of administration of his estate has or have been granted or
- (ii) in respect of any sum of money deposited in a Government Savings Bank or in any Provident Fund to which the provisions of the Provident Funds Act 1897², apply

¹ Subs by the A.O. for Presidency

² See now the Provident Funds Act 1903 (19 of 1903)

³ Subs by the Administrator General's (Amendment) Act 1903 (3 of 1903) s. 2 (1) thou art 1

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

Grant of
certificate to
creditors
and power
to take
charge of
certain
estates.

32. If, in cases falling within section 31, no person claiming to be interested otherwise than as a creditor in such assets or in the due administration thereof obtains, within three months of the death of the deceased a certificate from the Administrator General under the same section, or probate of a will or letters of administration of the estate of the deceased, and such deceased was not an exempted person, or was an exempted person who has left assets within the ordinary original civil jurisdiction of the High Court, or within any area notified by the Government in this behalf in the Official Gazette, the Administrator General may administer the estate without letters of administration, in the same manner as if such letters had been granted to him ;

and if he neglects or refuses to administer such estate, he shall, upon the application of a creditor, grant a certificate to him in the same manner as if he were interested in such assets otherwise than as a creditor,

and such certificate shall have the same effect as a certificate granted under the provisions of section 31, and shall be subject to all the provisions of this Act which are applicable to such certificate :

Provided that the Administrator General may, before granting such certificate, if he thinks fit, require the creditor to give reasonable security for the due administration of the estate of the deceased.

Adminis-
trator
General
not bound
to grant
certificate
unless satis-
fied of
claimant's
title, etc.
Effect of
certificate.

33. The Administrator General shall not be bound to grant any certificate under section 31 or section 32, unless he is satisfied of the title of the claimant and of the value of the assets left by the deceased within the ^{division} ~~presidency~~, either by the oath of the claimant, or by such other evidence as he requires.

34. The holder of a certificate granted in accordance with the provisions of section 31 or section 32, shall have in respect of the assets specified in such certificate the same powers and duties, and be subject to the same liabilities as he would have had or been subject to if letters of administration had been granted to him :

Provided that nothing in this section shall be deemed to require any person holding such certificate,

- (a) to file accounts or inventories of the assets of the deceased before any Court or other authority, or
- (b) save as provided in section 32 to give any bond for the due administration of the estate.

Revocation
of certificate.

35. The Administrator General may revoke a certificate granted under the provisions of section 31 or section 32 on any of the following grounds, namely :—

- (i) that the certificate was obtained by fraud or misrepresentation made to him.

(Part III—Rights, Powers, Duties and Liabilities of the Administrator General)

- (u) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though such allegation was made in ignorance or inadvertently

36 (1) When a certificate is revoked in accordance with the provisions of section 35, the holder thereof shall, on the requisition of the Administrator General, deliver it up to such Administrator General but shall not be entitled to the refund of any fee paid thereon

(2) If such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees or with both

37. The Administrator General shall not be bound to take out letters of administration of the estate of any deceased person on account of the assets in respect of which he grants any certificate under section 31 or section 32 but he may do so if he revokes such certificate under section 35 or ascertains that the value of the estate exceeded [two thousand] rupees

38 Where a person not having his domicile in British India has died leaving assets in any [Division] and in the country in which he had his domicile at the time of his death and proceedings for the administration of his estate with respect to assets in any such [Division] have been taken under section 31 or section 32, and there has been a grant of administration in the country of domicile with respect to the assets in that country

the holder of the certificate granted under section 31 or section 32 or the Administrator General, as the case may be, after having given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged at the expiration of the time therein named, such lawful claims as he has notice of, may instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto transfer, with the consent of the executor or administrator as the case may be in the country of domicile the surplus or residue to him for distribution to those persons

(f) Liability

39. (1) The revenues of the Government* shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were a private administrator, would be personally liable to discharge, except when the liability is one to which neither the Administrator

* Subs. by the Administrator General (Amendment) Act, 1906 (32 of 1906) s. 2 for 'one thousand'

* Subs. by the A.O. for Efficiency

* The words of India in the Official Trustees and Administrator General's Act Amendment Act 1922 (21 of 1922) s. 2

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.
Part IV.—Fees.)

General nor any of his officers has in any way contributed, or which neither he nor any of his officers could, by the exercise of reasonable diligence have averted, and in either of those cases the Administrator General shall not, nor shall the revenues ¹[of the Government],² * * * * * be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render ¹[the Government]² * * * * * or the Administrator General liable for anything done before the commencement of this Act, by or under the authority of the Administrator General.

Creditors' suits against Administrator General.

40. (1) If any suit be brought by a creditor against any Administrator General, such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Administrator General was reasonably entitled to require.

(2) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

Notice of suit not required in certain cases.

41. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply ^v of 1908. to any suit against the Administrator General in which no relief is claimed against him personally.

PART IV.

FEES.

Fees.

42. (1) There shall be charged in respect of the duties of the Administrator General such fees, whether by way of percentage or otherwise, as may be prescribed by the Government :

Provided that, in the case of any estate, the administration of which has been committed to the Administrator General before the commencement of this Act, the fees prescribed under this section shall not exceed the fees leviable in respect of such estate under the Administrator General's Act, 1874³, II of 187 as subsequently amended :

Provided further that, in respect of the duties of the Administrator General under the Regimental Debts Act, 1893⁴, the fees prescribed in this section ^{55 & 56} shall be determined in accordance with the provisions of that Act. ^{Vict., c. 1}

¹ The words " of the Government or " were ins. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 6.

² The words " or the G. of I. " rep. by the A. O.

³ Rep. by the Administrator General's Act, 1913 (3 of 1913).

⁴ Coll. of Stats. Ind., Vol. II.

(Part IV—Fees Part V—Audit of the Administrator General's Accounts)

(2) The fees under this section may be at different rates for different estates or classes of estates or for different duties and shall so far as may be be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government¹ * against loss under this Act)

43 (1) Any expenses which might be retained or paid out of any estate in the charge of the Administrator General if he were a private administrator of such estate shall be so retained or paid and the fees prescribed under section 42 shall be retained or paid in like manner as and in addition to such expenses

(2) The Administrator General shall transfer and pay to such authority in such manner and at such time as the Government may prescribe all fees received by him under this Act and the same shall be carried to the account and credit of the Government¹ *

PART V

AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS

44 The accounts of every Administrator General shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner

45 The auditors shall examine the accounts and forward to the Government a statement thereof in the prescribed form together with a report thereon and a certificate signed by them showing—

- whether they contain a full and true account of everything which ought to be inserted therein
- whether the books which by any rules made under this Act are directed to be kept by the Administrator General have been duly and regularly kept, and
- whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act or by any rules made thereunder,

or (as the case may be) that such accounts are deficient or that the Administrator General has failed to comply with this Act or the rules made thereunder in such respects as may be specified in such certificate

46 (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure 1908

- to summon any person whose presence he thinks necessary to attend him from time to time, and

¹ The words of India rep by the Official Trustees and Administrator General's Accounts Amendment Act 1911 (21 of 1911) s. 2

(Part V.—*Audit of the Administrator General's Accounts.* Part VI.—*Miscellaneous.*)

- (b) to examine any person on oath to be by him administered ; and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person ; and
- (d) to summon any person to produce any document or thing the production of which appears to be necessary for the purpose of such audit or examination.

(2) Any person who when summoned refuses, or without reasonable cause, neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to Government. XLV of 1860.

Costs of
audit, etc.

47. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the Government, and shall be defrayed in the prescribed manner.

PART VI.

MISCELLANEOUS.

General
powers of
administra-
tion.

48. The Administrator General may, in addition to, and not in derogation of, any other powers of expenditure lawfully exerciseable by him, incur expenditure—

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge ; and
- (b) with the sanction of the High Court¹* * * * * on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Power of
person
beneficially
interested to
inspect
Adminis-
trator
General's
accounts,
etc., and
take copies.

49. Any person interested in the administration of any estate, which is in the charge of the Administrator General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and on payment of the prescribed fee, to copies thereof and extracts therefrom.

¹ The words " at the Presidency-town " rep. by the A. O.

(Part I I — Miscellaneous)

50 (1) The Government shall make rules¹ for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for—

- (a) the accounts to be kept by the Administrator General and the audit and inspection thereof
- (b) the safe custody deposit and investment of assets and securities which come into the hands of the Administrator General
- (c) the remittance of sums of money in the hands of the Administrator General in cases in which such remittances are required
- (d) subject to the provisions of this Act the fees to be paid under this Act and the collection and accounting for any such fees
- (e) the statements schedules and other documents to be submitted to the Government or to any other authority by the Administrator General and the publication of such statements schedule or other documents
- (f) the realization of the cost of preparing any such statements schedules or other such documents

* * * * *

- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed
- (h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expense of any persons summoned or examined under the provision of this Act and of any expenditure incidental to such examination and
- (i) any matter in this Act directed to be prescribed

(3) All rules made under this Act shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act

51 Whoever during any examination authorised by this Act makes false upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding

52 All assets in the charge of the Administrator General which have been in his custody for a period of twelve years or upwards whether before or after the commencement of this Act without any application for payment there As to the classification of the assets

¹ For such rules for Bengal see Gen R and O, Vol IV p 406
for Madras see Madras R and O 1913 Vol I II p 231

for Bombay see Bombay L and O 1914 Vol II p 773

for the provinces of Assam L and O 1914 see the local Gazettes of 1914 or the latest editions of the Rules and Orders of those provinces

² Clause (ff) inserted by the Repealing and Amendment Act 1914 (10 of 1914) was repealed by the Destruction of Records Act 1917 (2 of 1917) s. 6 and Sch

(Part VI.—Miscellaneous.)

having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government^{1*} * * :

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any Court.

Mode of proceeding by claimant to recover principal money so transferred.

53. (1) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government^{1*} * * under the provisions of this Act, or any Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority, the Government^{1*} * * shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as appears to be due to the claimant.

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such assets, apply by petition to the High Court^{2*} * * * against the ³[Government], and such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceeding :

⁴[Provided that nothing in this section affects any option afforded to a claimant by section 179 of the Government of India Act, 1935.]

26 Geo.
5, c. 2.

(3) The Court may further direct by whom the whole or any part of the cost of each party shall be paid.

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

54. (1) Whenever any person, other than an exempted person, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the ⁵[Division] stating the following particulars so far as they may be known to him :—

- (a) the amount and nature of the assets,
- (b) whether or not the deceased left a will and, if so, in whose custody it is,
- (c) the names and addresses of the surviving next-of-kin of the deceased, and, on the lapse of one month from the date of the death,
- (d) whether or not any one has applied for probate of the will of the deceased or letters of administration of his estate.

(2) The District Judge shall retain the assets under his charge, or appoint an officer under the provisions of section 239⁶ of the Indian Succession Act, 1865, to take and keep possession of the same until the Administrator General X of 1865. has obtained letters of administration, or until some other person has obtained

¹ The words " of India " rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 7.

² The words " at the Presidency-town " rep. by the A. O.

³ Subs. by the A. O. for " Secretary of State for India in Council".

⁴ Ins. by the A. O.

⁵ Subs. by the A. O. for " Presidency".

⁶ See now s. 269 of the Indian Succession Act, 1925 (39 of 1925).

(Part VI—Miscellaneous)

probate or such letters or a certificate from the Administrator General under the provisions of this Act when the assets shall be delivered over to the holder of such probate, letters of administration or certificate

Provided that the District Judge may, if he thinks fit sell any assets which are subject to speedy and natural decay, or which for any other sufficient cause he thinks should be sold and he shall thereupon credit the proceeds of such sale to the estate

(3) The District Judge may cause to be paid out of any assets of which he or such officer has charge or out of the proceeds of such assets or of any part thereof such sums as may appear to him to be necessary for all or any of the following purposes, namely—

- (a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration of his estate or a certificate under this Act
- (b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer artizan or domestic servant
- (c) the relief of the immediate necessities of the family of the deceased and
- (d) such acts as may be necessary for the proper care and management of the assets left by the deceased,

and nothing in section 279 section 280 or section 281 of the Indian Succession Act 1865¹, or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons shall be held to affect the validity of any payment so caused to be made

55 (1) Nothing contained in the Indian Succession Act 1865¹, or the Indian Companies Act, 1882², shall be taken to supersede or affect the rights, duties and privileges of any Administrator General

(2) Nothing contained in the Indian Succession Act, 1865¹, or in this Act shall be deemed to affect, or to have affected, any law for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the Presidency towns³ * * * which shall be or has been taken charge of by the police for the purpose of safe custody

56 Any order made under this Act by any Court shall have the same effect as a decree

57. Notwithstanding anything in this Act, or in any other law for the time being in force, the [Central Government] may, by general or special order, direct that where a subject of a foreign State dies in British India and it appears that there is no one in British India other than the Administrator

Succession Act and Companies Act not to affect Administrator General and saving of provisions of Presidency Police Acts as to petty estates
Order of Court to be equivalent to decree
Provision for administration by Consular Officer in case of death

(Part VI.—Miscellaneous.)

Sir Currimbhoy Ebrahim Baronetcy. [1913 : Act IV.]

certain
circumstances
of foreign
subject.

General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any Consular Officer of such foreign State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the ¹[Central Government] by notification in the ²[Official Gazette] think fit to impose.

58. [Division of Presidency into Provinces.] Rep. by the A. O.

Saving of
provisions of
Indian
Registration
Act, 1908.
Saving.

59. Nothing in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908.

XVI of 1908.

³[59A. The amendments⁴ of this Act which come into force on the commencement of Part III of the Government of India Act, 1935, shall not affect the jurisdiction of any court with respect to any proceedings then pending before it and shall not be construed as transferring the administration of any property or estate then in the hands of any Administrator-General to any other Administrator-General.] ^{26 Geo. 5, c. 2.}

60. [Repeals.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

THE SCHEDULE.—[ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

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2. Incorporation of Trustees.
3. Heirs of Sir Currimbhoy Ebrahim to take his name.
4. Devolution of interest where beneficiary refuses, neglects or discontinues to use the names "Currimbhoy Ebrahim".
5. Vesting of settled property and trusts in respect thereof.
6. Payment of rates, taxes, etc., by Corporation.
7. Raising of the "Sinking Fund" and the "Repairs Fund".
8. Payment of the residue of the income to the Baronet for the time being.
9. Investment of sums set apart for formation of Funds.
10. Devolution of properties mentioned in Schedule II on full amount of Sinking Fund being raised.

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India."

³ Ins. by the A. O.

⁴ I. e. the amendments by the A. O. which came into force on the 1st April, 1937, simultaneously with Part III of the G. of I. Act, 1935.

SECTIONS

- 11 Investment of Sinking Fund
- 12 Income of Sinking Fund to be added to Fund in certain cases
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- 16 Power of Corporation to sell or exchange the premises described in the Schedule
- 17 Powers of Corporation as regards sale or exchange
- 18 Investment of sale proceeds
- 19 Vesting of lands and hereditaments in Corporation
- 20 Application of income during minority of Baronet
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- 22 Limit of total amount of such jointures chargeable on income
- 23 Provision for widow of Baronet dying under age
- 24 Amount payable under section 23 to be deemed a jointure for purposes of section 22
- 25 Vesting in Corporation of lands and hereditaments other than those described in the Schedules
- 26 Application of insurance moneys in respect of properties destroyed or damaged by fire
- 27 Ultimate trust in favour of heir on extinction of Baronetcy
- 28 Reimbursement of expenses of Corporation
- 29 Management of hereditaments vested in Corporation
- 30 Saving of existing rights

THE FIRST SCHEDULE

THE SECOND SCHEDULE

Act No IV of 1913

[27th February 1913]

An Act for settling certain properties belonging to Sir Currumbhoy Ebrahim, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by His Majesty King George V to hold to him and the heirs male of his body lawfully begotten, and to be begotten, and for other purposes connected therewith.

WHEREAS by Letters Patent King George V by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith Dated at Westminster the 20th day of July 1911 in the First Year of His Majesty's said Majesty made known that He of His Special Grace certain knowledge and mere motion had erected appointed and created His trusty and well beloved Sir Currumbhoy Ebrahim of Bombay Knight

to the dignity state and degree of a Baronet and him the said Sir Currimbhoy Ebrahim for himself his heirs and successors he did erect appoint and create a Baronet of the United Kingdom of Great Britain and Ireland by the said Letters Patent to hold the said dignity state and degree of Baronet unto him the said Sir Currimbhoy Ebrahim and the heirs male of his body lawfully begotten and to be begotten and whereas the said Sir Currimbhoy Ebrahim is desirous of settling in perpetuity such property on himself and the heirs male of his body who may succeed to the title of Baronet conferred by the said Letters Patent as shall be adequate to support the dignity of the title conferred on him and them as aforesaid and whereas the said Sir Currimbhoy Ebrahim is seized of and otherwise well and sufficiently entitled to the hereditaments described in Part I of the First Schedule hereunder written situate in the Island of Bombay and the hereditaments described in Part II of the said First Schedule situate at Poona in the Presidency of Bombay and whereas the hereditaments particularly described in the Second Schedule hereunder written were respectively by the several leases particularly specified in the Third Schedule hereunder written demised unto the said Sir Currimbhoy Ebrahim his heirs executors administrators and assigns with the appurtenances thereof respectively to hold the same unto the said Sir Currimbhoy Ebrahim his heirs executors administrators and assigns from the respective days therein respectively mentioned for the respective terms thereby granted subject to the payment of the rents thereby respectively reserved and the performance and observance of the covenants on the part of the Lessee and conditions therein respectively contained and whereas the said Sir Currimbhoy Ebrahim is desirous of settling the said hereditaments and premises particularly described in the First and Second Schedules hereunder written (all which are assessed to be of the aggregate market value of Rupees (20,00,000) Twenty lakhs) upon the trusts and for the purposes hereinafter declared and contained concerning the same premises and whereas the said Sir Currimbhoy Ebrahim is desirous that heirs male of his body to whom the said title of Baronet conferred by the said Letters Patent shall descend shall at the time of such descent upon them respectively take and bear the name of "Currimbhoy Ebrahim" in lieu of any other name or names whatever which they respectively may bear at the time of such descent on them respectively and he is also desirous that the Accountant-General, Bombay, the Collector of Bombay, the Chief Presidency Magistrate of Bombay all for the time being and the person in the actual enjoyment of the title of Baronet conferred by the said Letters Patent for the time being shall be the Trustees of the said hereditaments and premises and be likewise the Trustees for carrying into execution the general purposes and powers and provisions of this Act with relation to the said hereditaments and premises and whereas the said Sir Currimbhoy Ebrahim is desirous of settling the said hereditaments and premises so intended to be settled by him as aforesaid for the purposes of supporting the dignity of the said Baronetcy upon the trusts and for the purposes hereinafter limited and declared concerning the same and whereas it is expedient that the said trusts should be declared and the

said purposes should be effected by an Act of the Council of the Governor General for making laws and regulations, It is hereby enacted as follows —

1. This Act may be called "The Sir Currimbhoy Ebrahim Baronetcy Short title Act 1913"

2. Arthur Montague Brigstoke, Esqr, the Accountant General of Bombay, Edward Little Sale Esqr, the Collector of Bombay Arthur Henry Southcote Aston, Esqr, the Chief Presidency Magistrate of Bombay, and the said Sir Currimbhoy Ebrahim, Baronet and their successors the Accountant General of Bombay, the Collector of Bombay, the Chief Presidency Magistrate of Bombay all for the time being and the heir male of the body of the said Sir Currimbhoy Ebrahim to whom the said title and dignity of Baronet conferred by the said Letters Patent shall for the time being descend shall be and they are hereby created a Corporation with perpetual succession and a common seal under the style and title of 'The Trustees of the Sir Currimbhoy Ebrahim Baronetcy' and the said Arthur Montague Brigstoke Esqr, Edward Little Sale, Esqr, Arthur Henry Southcote Aston Esqr and Sir Currimbhoy Ebrahim Bart and their said successors (hereinafter styled "the Corporation") shall be and they are hereby constituted as such Corporation the Trustees for executing the trusts powers and purposes of this Act

3 The heirs male of the body of the said Sir Currimbhoy Ebrahim to whom the said title and dignity shall descend pursuant to the limitations of the Letters Patent whereby the said title and dignity have been granted shall take upon themselves respectively the names of Currimbhoy Ebrahim, in lieu and place of any other name or names whatever and such heirs male severally and successively shall be called by the names of Currimbhoy Ebrahim" and by these names shall name style and write themselves respectively upon all occasions whatever

4 In case any person to whom for the time being the said title of Baronet shall have descended shall for the space of one whole year thereafter or being then under age shall for the space of one whole year after he shall attain the age of eighteen years refuse or neglect to use the names of Currimbhoy Ebrahim" as hereinbefore enacted or in case any such person having so used these names shall for the space of one whole year discontinue to use the said names then in any or either of the said cases the estate or interest in the said hereditaments and premises hereby settled and in the hereditaments and moneys which shall hereafter become vested in the said Corporation by virtue of this Act upon the trusts and for the purposes herein declared and contained of the person who shall so refuse or neglect to use or having used shall so discontinue to use the said names shall during the remainder of his natural life be suspended and that during any and every such suspension the benefits and trusts hereby created for the heir male of the body of the said Sir Currimbhoy Ebrahim who shall use these names shall devolve on and belong to the heir male of the body of the said Sir Currimbhoy Ebrahim who would have succeeded to the said title of Baronet conferred by the said Letters Patent on the said Sir Currimbhoy Ebrahim in the case the heir male of the body of the said Sir Currimbhoy Ebrahim so refusing or neglecting to use

Incorporated of Trustees

Heirs of Sir Currimbhoy Ebrahim to take his name

Devolution of interest where beneficiary refuses or neglects or discontinues to use the names of Currimbhoy Ebrahim

or discontinuing to use the said name had departed this life; and if there shall not be at such time any such male heir of the body of the said Sir Currimbhoy Ebrahim then the hereditaments and premises hereby settled as also the hereditaments and moneys which shall hereafter become vested in the said Corporation by virtue of this Act shall be retained by the said Corporation and accumulated for the benefit of the male issue of the said Baronet that may subsequently be born and succeed to the said title and in default of any such male issue the whole of the said property shall devolve upon such person as would be entitled to the same if there had been a total failure of issue male of the said Sir Currimbhoy Ebrahim.

Vesting of
settled
property
and trusts
in respect
thereof.

5. Immediately upon the passing of this Act by force and virtue thereof the hereditaments and premises particularly described in the First Schedule hereunder written shall be vested in the said Corporation upon the trusts and for the purposes and with and subject to the powers provisions and declarations hereinafter declared and expressed and the hereditaments and premises particularly described in the Second Schedule hereunder written shall be vested in the said Corporation for all the respective residues of the respective terms granted by the said leases respectively to come and unexpired at the date of the passing of this Act upon the trusts and for the purposes and with and subject to the powers provisions and declarations hereinafter declared and expressed that is to say upon trust to permit the said Sir Currimbhoy Ebrahim for and during the term of his natural life and from and immediately after his decease to permit during the respective terms of their natural lives the successive male heirs of the body of the said Sir Currimbhoy Ebrahim who shall succeed to the title of Baronet conferred by the said Letters Patent (if he or they shall so desire) to use and occupy free of rent as their residence the hereditaments and premises particularly described in the Second part of the First Schedule hereunder written and also to use and occupy as his residence free of rent any one of the said hereditaments and premises particularly described in the First part of the First and in the Second Schedules hereunder written and to demise all or any of the remaining hereditaments and premises for any term of years not exceeding seven years to take effect in possession within three months from the date of the lease.

Payment of
rates, taxes,
etc., by
Corporation.

6. Out of the income of the premises particularly described in the First and the Second Schedules hereunder written (other than the premises which shall for the time being be used and occupied as a residence by the said Sir Currimbhoy Ebrahim or the heir male of his body to whom the said title of Baronet conferred by the said Letters Patent shall have descended) the said Corporation shall pay the rents and perform and observe the covenants by the Lessee and conditions by and in the said several indentures of lease reserved and contained and pay all rates taxes assessments dues and duties in respect of the said hereditaments and premises particularly described in the First and Second Schedules hereunder written and all buildings and erections standing thereon respectively and defray the cost of all ordinary repairs required for the purpose of maintaining such buildings in a habitable condi-

tion and of insuring the same against fire and all other outgoings of every nature whatsoever

7. The said Corporation shall out of the income referred to in section 6 hereof remaining after making the payments in the same section mentioned form for the purposes hereinafter mentioned two funds to the credit of one of which (hereinafter referred to as the 'Sinking Fund') the said Corporation shall carry every ¹[year] an amount which shall be equal to 00 61 per cent calculated on the said sum of Rupees (20 00 000) Twenty Lacs and in the event of other hereditaments being vested in the said Corporation upon the trusts and for the purposes by and in this Act declared and contained under and by virtue of the provisions of section 25 of this Act on the aggregate of the said sum of Rupees (20 00 000) Twenty Lacs and the value of the additional hereditaments so vested and to the credit of the other of which (hereinafter referred to as the 'Repairs Fund') the said Corporation shall carry every ¹[year] an amount which shall be equal to 3 72 per cent calculated on a Capital sum of Rupees (2 00 000) Two Lacs until such fund shall amount to the sum of Rupees (2 00 000) Two Lacs

8 The residue of the income referred to in section 6 hereof remaining after the payments mentioned in the same section are made and after the several sums are carried to the credit of the said Sinking Fund and the said Repairs Fund respectively as provided in section 7 hereof shall be paid to the said Sir Currimbhoy Ebrahim and the heir male of his body who shall for the time being have succeeded to and be in the enjoyment of the title of Baronet conferred by the said Letters Patent and shall be of full age for his own absolute use and benefit

9 The sums which shall from time to time under the provisions of this Act be set aside for the formation respectively of the Sinking Fund and the Repairs Fund (as also the interest of the securities in which the same respectively shall be invested) shall be invested by the said Corporation in or on any stocks funds or other securities of or the principal and interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the "[Central Government]" and the said Corporation shall be at liberty as often as the same shall be necessary or thought proper by them to alter vary and change such stocks funds and securities for others of the same or like nature

10 When and as often as the said Sinking Fund shall amount to the sum of Rs (20 00 000) Twenty Lacs and in the event of additional hereditaments having been vested in the said Corporation upon the trusts and for the purposes by and in this Act declared and contained under and by virtue of the provisions of section 25 of this Act to the sum which shall be equal to the said sum of Rs (20 00 000) Twenty Lacs and the value of the additional hereditaments so vested the said Corporation shall by force and virtue of this Act be divested of the hereditaments which shall then be vested in the said

¹ S 15 by s 2 of the Sir Currimbhoy Ebrahim Baronetcy (Amendment) Act 1917 (" of 11) for six months

² Subs by the A O for C of I

Corporation by force and virtue of this Act and such of them as shall be of a freehold tenure shall by force and virtue of this Act become vested absolutely and such of them as are of a leasehold tenure shall become vested for all the residues then unexpired of the several terms for which the same may be demised by the respective leases relating to them for his own use and benefit in the heir male of the body of the said Sir Currimbhoy Ebrahim who shall then have succeeded him in the title of Baronet conferred by the said Letters Patent.

Investment
of Sinking
Fund.

11. When and as often as the said Sinking Fund shall amount to the said sum of Rs. (20,00,000) Twenty Lacs and in the event of such further hereditaments having been added as mentioned in the last section to the sum which shall represent the aggregate of the said sum of Rs. (20,00,000) Twenty Lacs and the value of such additional hereditaments the said Corporation shall with all convenient despatch invest the same in the purchase of land and hereditaments situate in the Presidency of Bombay of a freehold or of a leasehold tenure provided that in the event of the purchase of premises of a leasehold tenure the leases in respect of such premises shall be renewable in perpetuity reserving a nominal rent and without any onerous conditions and covenants on the part of the Lessee.

Income of
Sinking
Fund to be
added to
Fund in
certain
cases.

12. From and after the time that the capital of the said Sinking Fund shall amount to the said sum of Rs. (20,00,000) Twenty Lacs and in the event mentioned in section 10 hereof to the sum which shall represent the aggregate of the said sum of Rs. (20,00,000) Twenty Lacs and the value of the additional hereditaments so vested as aforesaid the income thereof or of such part thereof shall not be so invested as aforesaid shall be credited to the said Sinking Fund and invested as directed by section 9 hereof and shall not form part of the capital sum on which the same accrues.

Application
of Repairs
Fund.

13. The said Repairs Fund shall be applied by and at the discretion of the said Corporation to the extraordinary structural repair of the buildings or building standing upon the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or upon any other the hereditaments which may by virtue and operation of this Act at any time become vested in the said Corporation.

Repairs Fund
to be kept
up to the
sum of
Rs. 2,00,000.

14. If and so soon as any part of the said Repairs Fund shall have been applied for any of the purposes mentioned in section 13 hereof the same shall be made up again to the said sum of Rs. 2,00,000 by setting aside and carrying to the credit thereof every ¹[year] out of the income of the hereditaments and premises which shall at any such time be vested in the said Corporation by virtue of this Act remaining after making the payments mentioned in section 6 hereof an amount which shall be equal to 3.72 per cent. calculated on a Capital sum of Rs. (2,00,000) Two Lacs and also by setting aside and carrying to the credit of such fund the income of the part thereof which shall not have been so applied as directed by section 13 hereof until such fund shall again amount to the said sum of Rs. 2,00,000.

¹ Subs. by s. 2 of the Sir Currimbhoy Ebrahim Baronetcy (Amendment) Act, 1917 (25 of 1917) for "six months".

15. As often as the said Repairs Fund shall amount to the said sum of Application of income of Repairs Fund
s 2,00,000 and so long as the same or any part thereof is not applied to any of the purposes to which it is directed by section 13 hereof to be applied the income thereof shall be applied in defraying the cost of all ordinary repairs which may be required to the hereditaments which may for the time being be vested in the said Corporation by force and virtue of this Act and all outgoings in respect of such premises

16. The said Corporation shall be at liberty to sell the said premises particularly described in the First and Second Schedules hereunder written and also any other hereditaments for the time being vested in them by force and virtue of this Act or any of them with the consent of the person entitled to and in the actual enjoyment of the title of Baronet conferred by the said Letters Patent and with the approval of the ¹[Provincial Government of Bombay] to be notified by a Resolution of the Government of Bombay published in the ²[Official Gazette] and also with the like consent and approval to exchange them or any of them for other lands and hereditaments in the Presidency of Bombay of a freehold or leasehold tenure and upon any such exchange to give or receive any money for equality of exchange provided always that the leases if any, in respect of the premises proposed to be taken in exchange are renewable in perpetuity reserving a nominal rent without any onerous covenants on the part of the lessee and conditions

17. Any such sale as aforesaid may be made either by public auction or private contract and the said Corporation shall be at liberty to make any stipulations as to title or evidence or commencement of title or otherwise on any conditions of sale or contract for sale or exchange of the hereditaments proposed to be sold or exchanged and may buy in or rescind or vary any contract for sale or exchange

18. In the event of a sale of any of the hereditaments for the time being vested in the Corporation by force and virtue of this Act or an exchange thereof the net sale proceeds or the moneys received for equality of exchange shall with all convenient despatch be invested in the purchase of lands and hereditaments of a freehold or leasehold tenure in the Presidency of Bombay Provided always that in the event of the purchase of premises of a leasehold tenure the leases in respect of such premises are renewable in perpetuity reserving a nominal rent without any onerous covenants on the part of the lessees and conditions Until so invested the same shall be invested in any of the securities mentioned in section 9 hereof and the income hereof shall be applied as directed by sections 6 and 7 hereof

19. The lands and hereditaments so to be purchased as directed by section 11 hereof and the lands and hereditaments which may be taken in exchange under the liberty in that behalf reserved to the said Corporation by section 16 hereof or which may be purchased under the liberty in that behalf reserved to the said Corporation by sections 18 and 26 hereof shall from and immediately after the completion of the purchase or exchange vest in the said

¹ Subs. by the A. O. for Governor of Bombay in Council.

² Subs. by the A. O. for Bombay Govt. Gazette.

Corporation upon the trusts and for the purposes by and in this Act declared and contained of and concerning the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or such of them as may then be subsisting and capable of taking effect and subject to the powers provisions and declarations in this Act contained concerning the same in the same manner and to the same effect as if such hereditaments had been expressly vested by this Act in the said Corporation upon the trusts and for the purposes in this Act declared and contained.

Application
of income
during
minority of
Baronet.

20. The said Corporation during the minority of any heir male of the body of the said Sir Currimbhoy Ebrahim for the time being entitled to and in the enjoyment of the title of Baronet conferred by the said Letters Patent shall pay and apply for and towards the maintenance education and benefit of such Baronet during his minority so much only of the income of the hereditaments which shall be vested in them for the purposes and upon the trusts by and in this Act declared and contained, which by section 8 hereof is directed to be paid to the heir male of the body of the said Sir Currimbhoy Ebrahim entitled to and in the enjoyment of the title of Baronet conferred by the said Letters Patent who shall be of full age as the said Corporation shall in their discretion think proper and shall from time to time invest the residue thereof upon the securities specified in section 9 hereof and shall upon such Baronet attaining his age of majority pay over assign and transfer to him or as he shall direct and for his absolute benefit such investments and all accumulations thereof and in the event of the death of such Baronet before attaining his age of majority the said Corporation shall stand possessed of such investments and the accumulations thereof upon trust for the heirs of such Baronet absolutely.

Power of
Baronet
to appoint
jointures
in lieu of
maintenance
and other
claims.

21. It shall be lawful for the said Sir Currimbhoy Ebrahim and for any heir male of his body on whom the title of Baronet conferred by the said Letters Patent shall from time to time descend of full age and when in the actual enjoyment of the said title and who shall not refuse or neglect or discontinue to use for the period hereinbefore in that behalf mentioned the said names of "Currimbhoy Ebrahim" as hereinbefore enacted either before or after his marriage with any woman or women by any deed or will (but subject and without prejudice to the annuity or annuities if any which shall then be subsisting and payable by virtue of any appointment made under and in pursuance of this present power) to limit and appoint unto any woman or women whom he shall marry for her or their life or lives and for her or their maintenance or jointure or jointures in bar of any legal or customary right to maintenance or any other claim whatsoever, any annuity or annuities not exceeding in all the sum of Rs. 10,000 to commence and take effect immediately after the decease of the Baronet limiting or appointing the same to be issuing and payable out of the said income payable under this Act for his own absolute use and benefit to the heir male of the body of the said Sir Currimbhoy Ebrahim on whom the said title of Baronet conferred by the said Letters Patent shall have descended and who shall be of full age and to be paid and payable by equal half-yearly payments the first of such half-

yearly payments to be made on the first half yearly day after the decease of the Baronet who shall have appointed such annuity, Provided always that in case any person on whom such title shall descend shall have refused or neglected to use the said names of "Currimbhoy Ebrahim" or shall discontinue to use such names for a year during his life every such limitation and appointment either previously or afterwards made shall be and become inoperative and invalid and no such annuity thereby created or appointed shall take effect and be payable

22 Provided always that such income as aforesaid shall not at one and the same time be subject to the payment of more than the yearly sum of Rs 20 000 for or in respect of any jointure or jointures which shall be made in pursuance of the power hereinbefore contained so that if by virtue of or under the same power the said income would in case this present provision had not been inserted be charged at any one time with a greater yearly sum for jointures in the whole than the yearly sum of Rs 20 000 the yearly sum which shall occasion such excess or such part thereof as shall occasion the same shall during the time of such excess abate and not be payable

23 If any heir male of the body of the said Sir Currimbhoy Ebrahim shall succeed to the title of Baronet conferred by the said Letters Patent while he is still a minor under the age of eighteen years and shall thereafter die without attaining the age of majority leaving a widow him surviving the said Corporation shall out of the said income during the minority of such widow apply for and towards the maintenance education and benefit of such widow while she continues to be a widow such sum not exceeding Rs 500 per month as the said Corporation in their discretion think proper and shall after such widow shall attain her age of majority and so long as she continues to be a widow pay to her for her own absolute use and benefit the yearly sum of Rs 10 000 payable half yearly the first of such half yearly payments to be made on the 1st half yearly day after she shall attain her age of majority

24 In estimating for the purposes of section 23 hereof the total amount payable out of the said income for jointure the amount directed to be paid in section 23 hereof shall be deemed to be a jointure settled under section 21 hereof

25 If at the time when the said Sinking Fund shall first amount to the sum of Rs (20 00 000) Twenty Lacs (but not afterwards) the heir male of the body of the said Sir Currimbhoy Ebrahim who shall then have succeeded to the said title of Baronet conferred by the said Letters Patent shall be desirous of vesting in the said Corporation other lands and hereditaments upon the trusts and for the purposes herein declared and continued concerning the said hereditaments and premises particularly described in the First and Second Schedules hereunder written and subject to the powers provisions and declarations herein contained and for that purpose and with that intent shall at his own expense set in the said Corporation such lands hereditaments and premises then the said Corporation may with the previous con-

sent of the ¹[Provincial Government of Bombay] notified as aforesaid accept such lands hereditaments and premises and the same shall thenceforth be held by the said Corporation upon the same trusts and for the same purposes and subject to the same powers provisions and declarations as are by and in this Act declared and contained with regard to the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or upon such of them as shall then be subsisting and capable of taking effect in the same manner and to the same effect as if such hereditaments had been expressly vested by this Act in the said Corporation upon the trusts and for the purposes in this Act declared and contained. Provided always that the total value of the additional premises so vested in the said Corporation shall not exceed Rs. (20,00,000) Twenty Lacs. Provided also that if at such date the person who shall then have succeeded to the said title be a minor under the age of 18 years then he shall be entitled to exercise the liberty hereby reserved at any time before the expiration of one year after he shall have attained his age of majority.

Application
of insurance
moneys in
respect of
properties
destroyed
or damaged
by fire.

26. In case any of the hereditaments which shall at any time be vested in the said Corporation shall be destroyed or damaged by fire the moneys received in respect of such insurance shall in case the premises so destroyed or damaged are any of the hereditaments and premises particularly described in the Second Schedule hereunder written or are comprised in any indenture of lease be applied in accordance with the provisions in that behalf contained in the lease by which the same are demised and in case of any other premises be applied either in rebuilding or reinstating the premises so destroyed or damaged by fire or upon the application of the person for the time being entitled to and in the enjoyment of the said title of Baronet and with the consent of the ¹[Provincial Government of Bombay] notified as aforesaid may be laid out in the purchase of other hereditaments in the Presidency of Bombay of a freehold or of a leasehold tenure provided that the leases in respect of such premises are renewable in perpetuity reserving a nominal rent without any onerous covenants on the part of the lessee and conditions. In the event of such purchase the hereditaments so purchased shall immediately from and after the completion of the purchase thereof vest in the said Corporation upon the trusts and for the purposes by and in this Act declared and contained of and concerning the hereditaments and premises particularly described in the First and Second Schedules hereunder written or such of them as may then be subsisting and capable of taking effect and subject to the powers provisions and declarations in this Act contained concerning the same in the same manner and to the same effect as if such hereditaments had expressly been vested by this Act in the said Corporation upon the trust and for the purposes in this Act declared and contained. Until such insurance moneys shall be so laid out the said Corporation shall invest the same in one or more of the securities specified in section 9 hereof and

¹ Subs. by the A. O. for "Governor of Bombay in Council".

the income thereof shall be applied as the income of the premises so destroyed or damaged

27. Upon failure and in default of heirs male of the body of the said Sir Currimbhoy Ebrahim to whom the same title of Baronet may descend the said Corporation shall stand possessed of the said hereditaments and premises particularly described in the First Schedule hereunder written and of any other hereditaments of a freehold tenure and of the funds which may then be vested in them by virtue and operation of this Act upon trust for the heirs of the last Baronet absolutely and shall also stand possessed of the said hereditaments and premises particularly described in the Second Schedule hereunder written or such of them as may then be still vested in the said Corporation and any other hereditaments of a leasehold tenure which may then be vested in the said Corporation by virtue of this Act upon trust for the heirs of the last Baronet for all the then residues of the terms granted by the leases by which the same are demised

Ultimate trust in favour of heir on extinction Baronetcy

28. It shall be lawful for the said Corporation out of any moneys which shall come to their hands by virtue of the trusts and provisions of this Act to retain and reimburse themselves all costs expenses and damages which they shall or may sustain expend or disburse in or about the execution of the trusts powers and provisions herein contained or in relation thereto

Reimbursement of expenses of Corporation

29. The actual management of the hereditaments for the time being vested in the said Corporation including the collection of rents and carrying out repairs shall be in the hands of the person in the actual enjoyment for the time being of the said title of Baronet conferred by the said Letters Patent being of full age, subject nevertheless to the control and supervision of the said Corporation

Management of hereditaments vested in Corporation

30. Saving always to the King's Most Excellent Majesty, his heirs and successors and to all and every other person and persons bodies politic and corporate and his heir and their respective heirs executors and administrators and successors and every of them (other than and except the said Sir Currimbhoy Ebrahim his devisees and heirs and assigns) all such estate right title interest claim and demand whatsoever of into out of or upon the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or any part or parts thereof respectively as they every or any of them had before the passing of this Act and would could or might have had held or enjoyed in case this Act had not been passed

Saving of existing rights

THE FIRST SCHEDULE

PART I

First — All that piece or parcel of land or ground with the messuage tenement or bungalow standing thereon situate lying and being on the Western side of Pedder Road Cumbrill Hill near Mahalaxmi in the Island of Bombay in the Sub District of the Registrar of Bombay and containing by admeasurement two thousand one hundred and forty seven square yards or thereabouts be the same little more or less and bounded as follows that is to say

on or towards the North by a loose stone Gudya and beyond that the vacant land of Trimluck Jugonnath on or towards the East by the Government ground and beyond that by the said Pedder Road on or towards the West and South by a loose stone Gudya and beyond that by the vacant land belonging to Nowroji Jehangir Gamadia registered by the Collector of Land Revenue under Old No. 616 New No. 2861 Old Survey No. 81 New Survey Nos. 7075, 7113, 7119 and assessed by the Municipality under Street Nos. 102, 112 Ward No. 3494.

Secondly :—All that piece of Government ground with the messuage or dwelling house standing thereon situate on the East side of Shamjee Hassajee Street now called Samuel Street in the Registration Sub-District of Bombay containing by admeasurement two hundred and eighteen square yards or thereabouts assessed under Ward B. No. 1667 and Street 165-167 and registered in the books of the Collector of Land Revenue under Old No. 1023 and New No. 6751 Old Survey No. 198 and New Survey No. 2788 and bounded on the East by a Sweeper's passage on the West by Shamji Hassajee Street or Samuel Street on the North by the property formerly of Khan Mahomed Habibbhoy but now of Ebrahim Hassam and on the South by the property formerly of Cassum Natha but now of Currimbhoy Ebrahim.

PART II.

All that piece or parcel of vacant land or ground situate lying and being in the Civil Lines of Poona in the Registration Sub-District of Haveli containing by admeasurement three acres twenty-eight Gunthas and forty-one square yards being equal to seventeen thousand nine hundred and forty-nine square yards or thereabouts being portion of land registered in the Books of the Collector under Old Survey No. 94 and the New No. 126 and which said land is bounded as follows that is to say on or towards the East partly by the land belonging to K. B. Dastoor Hoshang Jamaspa and partly by the road leading from Bund garden to the City on or towards the West by the land belonging to Narayan bin Raghoji Dhala on or towards the North by the property of Hari Rowji and on or towards the South by the road leading to Record Hall and beyond that by the property of Desai Hari Prasad together with bungalow and buildings standing thereon.

THE SECOND SCHEDULE.

First :—All that piece of land situate on the Wodehouse Road Estate of the Improvement Trust at the junction of the Wodehouse Road and Colaba Causeway on the Esplanade in the City and Island and Sub-Registration District of Bombay which has been computed to contain an area of three thousand four hundred and seventy-six square yards or thereabouts and which is bounded on the West by Wodehouse Road aforesaid on the East by Colaba Causeway on the North by the junction of the said two roads and.

on the South by the land known as Plots Nos 11A and 11C on the said Improvement Trust Estate which said piece of land is known as Plot No 11B Wodehouse Road and which said premises are assessed by the Collector of Land Revenue under New Survey No 9561 and are assessed by the Municipality under Ward No 886 (13) Street Nos 16, 16B together with the buildings now erected and built thereon and known as Hotel Majestic

Secondly — All that piece of Leasehold Land situate on the East side of a New Road on the Esplanade in the City and Island and Sub Registration District of Bombay which has been computed to contain the total area of one thousand five hundred and seventeen square yards or thereabouts and which is bounded on the North by a passage on the East by vacant land of the Bombay Improvement Trust on the South by Plot No 6 Wellington Lines and on the West by a New Road and which said piece of land is known as Plot No 7 Wellington Lines and which premises are assessed by the Collector of Land Revenue under part of New Survey Nos 90562 and 90563 and are assessed by the Municipality under Ward No 1301 (7) Street No 3 together with the buildings and premises erected and built thereon and which premises are known as Meher Mansions

Thirdly — All that piece of Land situate on the East side of a New Road on the Esplanade in the City and Island and Sub Registration District of Bombay which has been computed to contain a total area of one thousand and five hundred square yards or thereabouts and which is bounded on the North by Plot No 4 Wellington Lines on the East by the land of the Bombay Improvement Trust proposed to be laid out as a central garden on the South by Plot No 2 Wellington Lines and on the West by the New Road aforesaid which said piece of land is known as Plot No 3 Wellington Lines and which said premises are assessed by the Collector of Land Revenue under New Survey No 9562 and are assessed by the Municipality under Ward No 1301 (3) Street No 3B together with the buildings and premises now erected and built thereon

Fourthly — All that piece of Leasehold Land situate on the Colaba Reclamation in the Lower Colaba Division of A Ward in the City and Island and Sub Registration District of Bombay which piece of land has been computed to contain a total area of two thousand four hundred and forty nine square yards or thereabouts be the same more or less and which is bounded on the North East by Fazal Road on the South East by a 10 Feet Road and on the South West by Plots Nos 5 and 6 belonging to Fazalbhoy Currambhoy Ebrahim and on the North West by Cuffe Parade which said piece of land is known as Plots Nos 6 and 7 on the Colaba Reclamation and which said premises are assessed by the Collector of Land Revenue under New Survey No 9765 and are assessed by the Municipality under Ward Nos 120 225 (11) Street No 12 J together with all buildings and premises now erected and built thereon

Fifthly — All that piece of land situate on the Colaba Reclamation in the Lower Colaba Division of A Ward in the City and Island and Sub Registration District of Bombay which piece of land has been computed to contain

White Phosphorus Matches Prohibition. [1913 : Act V.
a total area of 2,452 square yards or thereabouts and bounded on the North-East by Plots Nos. 6-7 on the South-East by a 40 Feet Road on the South-West by Khadoo Road and on the North-West by Cuffe Parade which said piece of land is known as Plots Nos. 5-6 on the Colaba Reclamation and which said premises are assessed by the Collector of Land Revenue under New Survey No. 9765 and are assessed by the Municipality under Ward No. 225 (10) Street No. 12 I together with all buildings and premises now erected and built thereon.

THE WHITE PHOSPHORUS MATCHES PROHIBITION ACT, 1913.

ACT No. V OF 1913.¹

[7th March, 1913.]

An Act to prohibit the importation, manufacture and sale of matches made with white phosphorus.

WHEREAS it is expedient to prohibit the importation, manufacture and sale of matches made with white phosphorus; It is hereby enacted as follows :—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the White Phosphorus Matches Prohibition Act, 1913.

(2) It extends to the whole of British India ; and

(3) It shall come into force on the first day of July, 1913, with the exception of section 6, which shall come into force on the first day of July, 1914.

Definition.

2. In this Act, "white phosphorus" means the substance commonly known as white or yellow phosphorus.

3. [Prohibition of importation by addition to section 18, Act VIII of 1878.]
Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

Prohibition
of use of
white phos-
phorus in
manufacture
of matches.

4. (1) No person shall use white phosphorus in the manufacture of matches.

(2) Any person who uses, or permits the use by any person under his control, of white phosphorus in the manufacture of matches, shall be punishable with fine which may extend to two hundred rupees.

Power of
Inspector of
Factories
to take
samples of
material
used in
manufac-
ture.

5. (1) Every person who manufactures matches shall allow an Inspector of Factories appointed under the Indian Factories Act, 1911², at any time XII C
to take for analysis sufficient samples of any material in use or mixed for use, in such manufacture :

¹ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 220 ; for Report of Select Committee, see *ibid*, 1913, Pt. V, p. 35 ; and for Proceedings in Council. see *ibid*, 1913, Pt. VI, pp. 16, 64 and 146.

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 ; in the Sonthal Parganas by Notification under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), see B. & O. Gazette, 1914, Pt. II, p. 413.

² See now the Indian Factories Act, 1934 (25 of 1934).

Provided that any such person may, at the time the sample is taken, and on providing the necessary appliances, require the Inspector to divide the sample so taken into two parts, and to mark, seal and deliver to him one part

(2) Any person who refuses to permit any such Inspector of Factories as aforesaid to take a sample, in accordance with the provisions of sub section (1), shall be punishable with fine which may extend to two hundred rupees

6. (1) No person shall sell, or offer or expose for sale, or have in his possession for the purposes of sale, any matches made with white phosphorus Prohibition of sale

(2) Any person who contravenes the provisions of sub section (1) may, on complaint to a Presidency Magistrate, Sub divisional Magistrate or Magistrate of the first class, be ordered to forfeit any such matches in his possession, and any matches so forfeited shall be destroyed or otherwise dealt with as the Magistrate may direct

THE MUSSALMAN WAKF VALIDATING ACT, 1913.

ACT No VI OF 1913¹

[7th March 1913]

An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants

WHEREAS doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves their families, children and descendants and ultimately for the benefit of the poor or for other religious pious or charitable purposes, and whereas it is expedient to remove such doubts, It is hereby enacted as follows —

1. (1) This Act may be called the Mussalman Wakf Validating Act, 1913 Short title and extent.

(2) It extends to the whole of British India

¹ For Statement of Objects and Reasons see Gazette of India 1911 Pt V, p 16* for Report of Select Committee see *ibid* 1913 Pt V, p 32 and for Proceedings in Council see *ibid* 1911, Pt VI p 402 and *ibid* 1913 Pt VI p 29 65 and 1147

This Act has been declared to be in force in the Sonthal Parganas by Notification under s 3 of the Sonthal Parganas Settlement Regulation 13 of 1872 see B & O Gazette 1914 Pt II, p 413

It has been applied to wakfs created before its commencement, see the Mussalman Wakf Validating Act 1930 (72 of 1930) s 2

White Phosphorus Matches Prohibition. [1913 : Act V.

a total area of 2,452 square yards or thereabouts and bounded on the North-East by Plots Nos. 6-7 on the South-East by a 40 Feet Road on the South-West by Khattoo Road and on the North-West by Cuffe Parade which said piece of land is known as Plots Nos. 5-6 on the Colaba Reclamation and which said premises are assessed by the Collector of Land Revenue under New Survey No. 9765 and are assessed by the Municipality under Ward No. 225 (10) Street No. 12 I together with all buildings and premises now erected and built thereon.

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This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 ; in the Sonthal Parganas by Notification under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), see B. & O. Gazette, 1914, Pt. II, p. 413.

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An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants

WHEREAS doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves, their families, children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable purposes, and whereas it is expedient to remove such doubts, It is hereby enacted as follows —

1 (1) This Act may be called the Mussalman Wakf Validating Act, Short title and extent

(2) It extends to the whole of British India

¹ For Statement of Objects and Reasons see Gazette of India 1911 Pt V, p 107 for Proceedings in Council, and 147

organised by Notification under sec B & O Gazette 1914

11 11 p 413

It has been applied to wakfs created before its commencement see the Mussalman Wakf Validating Act 1930 (37 of 1930) s 2

2. In this Act, unless there is anything repugnant in the subject or con- Definitions.
text,—

- (1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.
- (2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

3. It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes :—

Power of
Mussalmans
to create
certain
wakfs.

- (a) for the maintenance and support wholly or partially of his family, children or descendants, and
- (b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated :

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

4. No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

Wakfs not
to be invalid
by reason of
remoteness
of benefit to
poor, etc.
Saving of
local and
sectarian
custom.

5. Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.

THE INDIAN COMPANIES ACT, 1913.

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APPENDIX II.

ACT No. VII OF 1913.¹

[27th March, 1913.]

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other Associations ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Indian Companies Act, 1913.

(2) It shall come into force on the first day of April 1914 ; and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

²[2. (1)] In this Act, unless there is anything repugnant in the subject or context,—

(1) “ articles ” means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in ³Table B in the Schedule annexed to

¹ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 151 ; for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 45 ; and for Proceedings in Council, see *ibid.*, 1912, Pt. VI, p. 586, and *ibid.*, 1913, Pt. VI, pp. 6, 106 and 300.

The provisions of this Act do not apply to registered Co-operative Societies in Madras, Bihar and Orissa : see the Madras Co-operative Societies Act, 1932 (Mad. 6 of 1932), s. 61, and the B. & O. Co-operative Societies Act, 1935 (B. & O. 6 of 1935), s. 3.

² The original s. 2 was re-numbered as sub-section (1) of that section by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 2.

³ See Appendix I, p. 434, *infra*.

Short title,
commence-
ment and
nt.

Definitions.

(Part I—Preliminary)

Act No XIX of 1857 or in ¹Table A in the First Schedule annexed to the Indian Companies Act, 1882, or in Table A in the First Schedule annexed to this Act

(2) "Company" means a company formed and registered under this Act or an existing company

(3) "the Court" means the Court having jurisdiction under this Act

(4) "debenture" includes debenture stock

(5) "director" includes any person occupying the position of a director by whatever name called

(6) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction

(7) "existing company" means a company formed and registered under the ²Indian Companies Act 1866 or under any Act or Acts repealed thereby, or under the Indian Companies Act 1882

(8) "Insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses

³[(9) "manager" means a person who, subject to the control and direction of the directors has the management of the whole affairs of a company, and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not

(9A) "managing agent" means a person firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent if any otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called

Explanation—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act]

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act

¹ See Appendix II p 444, *infra*

² Rep. by the Indian Companies Act, 1882 (6 of 1882) which was in turn rep. by this Act.

³ Cls (9) and (9A) substituted by the Indian Companies (Amendment) Act 1936 (22 of 1936) s 2, for original cl (9)

(Part I.—Preliminary.)

- (11) "officer" includes any director, ¹[managing agent,] manager or secretary but, save in sections 235, 236 and 237, does not include an auditor :
- (12) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the ²[Central Government] :
- ³[(13) "private company" means a company which by its articles—
- (a) restricts the right to transfer the shares, if any ; and
 - (b) limits the number of its members to fifty not including persons who are in the employment of the company ; and
 - (c) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company :
- Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member :]
- ¹[(13A) "public company" means a company incorporated under this Act or under the Indian Companies Act, 1882, or under the VI of 1882. Indian Companies Act, 1866, or under any Act, repealed thereby, X of 1866. which is not a private company :]
- (14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company ¹[but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed :]
- (15) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies : and
- (16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied :
- ⁴[(17) "trading corporation" means a trading corporation within the meaning of Item 33 in List I in the Seventh Schedule to the Government of India Act, 1935.]

26 Geo. 5,
c. 2.

¹[(2) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and

- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 2.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by Act 22 of 1936, s. 2, for original cl. (13).

⁴ Ins. by the A. O.

(Part I—Preliminary)

entitle the company to more than fifty per cent of the voting power in that other company, or

- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression "subsidiary company" in this Act means a company in the case of which the conditions of this sub section are satisfied and includes a subsidiary company of such company

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only no account shall, for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held]

¹[2A. Notwithstanding anything in the last preceding section a company which was ²immediately before the separation of Burma and Ailen from India a company as defined by the said section being a company the registered office whereof is in Burma or Ailen —

Provisions as to companies registered in Burma or Ailen before separation from India

- (a) shall be deemed for the purposes of this Act to be a company registered and incorporated outside British India and
- (b) shall not unless the subject matter or context so requires be included in the expressions "company" "existing company" "public company" and "private company"

Provided that—

- (i) for the purposes of section 277 of this Act such a company shall for a period of six months from the separation be deemed to be a company incorporated and registered in British India
- (ii) the separation of Burma and Ailen from India shall not render void any mortgage or charge which immediately before that date was void against the liquidator or creditors of such a company]

3 (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate

Jurisdiction of the Courts

Provided that the ³[Central Government] may by notification in the ⁴[Official Gazette] and subject to such restrictions and conditions as it thinks fit empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court and in that case such District Court shall as regards the jurisdiction so conferred be the Court in respect of all companies having their registered offices in the district

¹ Ins. by the A O

² I.e. immediately before the 1st April 1937

³ Subs. by the A O for L G

⁴ Subs. by the A O for Local Official Gazette

(Part I.—Preliminary. Part II.—Constitution and Incorporation.)

(2) For the purposes of jurisdiction to wind up companies, the expression “registered office” means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

PART II.

CONSTITUTION AND INCORPORATION.

Prohibition
of partner-
ships exceed-
ing certain
number.

4. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other ¹[Indian law] or of Royal Charter or Letters Patent.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other ¹[Indian law] or of Royal Charter or Letters Patent.

²[(3) This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees.]

Memorandum of Association.

5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration,

Mode of
forming in-
corporated
Company.

¹ Subs. by the A. O. for “Act of the G. G. in C.”

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 3.

(Part II—Constitution and Incorporation)

form an incorporated company, with or without limited liability (that is to say), either—

- (i) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares), or
- (ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee), or
- (iii) a company not having any limit on the liability of its members (in this Act termed an unlimited company)

6. In the case of a company limited by shares—

Memorandum
of company
limited by
shares

(1) the memorandum shall state—

- (i) the name of the company, with "Limited" as the last word in its name,
 - (ii) the province in which the registered office of the company is to be situate,
 - (iii) the objects of the company, ¹[and, except in the case of trading corporations, the territories to which they extend],
 - (iv) that the liability of the members is limited,
 - (v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount
- (2) no subscriber of the memorandum shall take less than one share.
- (3) each subscriber shall write opposite to his name the number of shares he takes

7. In the case of a company limited by guarantee—

Memorandum
of company
limited by
guarantee.

(1) the memorandum shall state—

- (i) the name of the company, with "Limited" as the last word in its name,
- (ii) the province in which the registered office of the company is to be situate,
- (iii) the objects of the company, ¹[and, except in the case of trading corporations, the territories to which they extend],
- (iv) that the liability of the members is limited,
- (v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he

(Part II.—Constitution and Incorporation.)

ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount :

(2) if the company has a share capital—

- (i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;
- (ii) no subscriber of the memorandum shall take less than one share ;
- (iii) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum
of unlimited
company.

8. In the case of an unlimited company—

(1) the memorandum shall state—

- (i) the name of the company ;
 - (ii) the province in which the registered office of the company is to be situate ;
 - (iii) the objects of the company, ¹[and, except in the case of trading corporations, the territories to which they extend] :
- (2) if the company has a share capital—
- (i) no subscriber of the memorandum shall take less than one share ;
 - (ii) each subscriber shall write opposite to his name the number of shares he takes.

Printing and
signature of
memorandum.

²[9. The memorandum shall—

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively, and
- (c) be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signature.]

Restriction
on altera-
tion of
memo-
randum.

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act :

³[Provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company, shall not be deemed to be such condition.]

¹ Ins. by the A. O.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 4, for the original s. 9.

³ Ins. by s. 5, *ibid.*

(Part II — Constitution and Incorporation)

11. (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires Name of company & change of name

(2) If a company, through inadvertence or otherwise, is without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive the first-mentioned company may, with the sanction of the registrar change its name

¹(3) Except with the previous consent in writing of the [Central Government] no company shall be registered by a name which—

(a) contains any of the following words namely 'Crown' 'Emperor' 'Empire' 'Empress' 'Federal' 'Imperial' 'King' 'Queen' 'Royal' 'State' 'Reserve Bank' 'Bank of Bengal' 'Bank of Madras' 'Bank of Bombay' or any word which suggests or is calculated to suggest the patronage of His Majesty or of any member of the Royal Family or any connection with His Majesty's Government or any department thereof or

(b) contains the word 'Municipal' or 'Chartered' or any word which suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act]

(4) Any company may by special resolution and subject to the approval of the ²[Central Government] signified in writing : * * * * * change its name

(5) Where a company changes its name the registrar shall enter the new name on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

12 (1) Subject to the provisions of this Act, a company may, by special resolution, after the provisions of its memorandum so as to change the place Alteration of memorandum

¹ Subs. by the Indian Companies (Amendment) Act 1976 (23 of 1936) s. 6 for the original sub-section

² Subs. by the A. O. for G. G. & C.

³ Subs. by the A. O. for L. G.

⁴ The words "under the hand of one of the Secretaries to such Court" rep. by the A. O.

(Part II.—Constitution and Incorporation.)

of the registered office from one province to another, or with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently ; or
- (b) to attain its main purpose by new or improved means ; or
- (c) to enlarge or change the local area of its operations ; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) to restrict or abandon any of the objects specified in the memorandum ; ¹[or
- (f) to sell or dispose of the whole or any part of the undertaking of the company ; or
- (g) to amalgamate with any other company or body of persons].

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and
- (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company may be expended in any such purchase.

Power of
Court when
confirming
alteration.

Exercise of
discretion by
Court.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 7.

(Part II -- Constitution and Incorporation)

15. (1) A certified copy of the order confirming the alteration together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company

Procedure on confirmation of the alteration

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of such provinces and each of such registrars shall register the same, and shall certify under his hand the registration thereof and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper

16 No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration or within such further time as may be allowed by the Court in accordance with the provisions of section 15 such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time as the case may be, become absolutely null and void

Effect of failure to register within three months

Provided that the Court may, on sufficient cause shown revive the order on application made within a further period of one month

Articles of Association

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company

Registration of articles

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule, and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56 regulation 66 regulation 71, regulations 78 79, 80, 81 and 82 regulation 95 regulation 97, regulation 103, regulation 107 and regulations 112, 113 114, 115 and 116 contained in that Table

Provided that regulation 78 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company

¹ Ins. by the Indian Companies (Amendment) Act, 1933 (22 of 1933), s. 8.

(Part II.—Constitution and Incorporation.)

Provided further that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise.]

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Application
of Table A.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form and
signature of
articles.

19. Articles shall—

- (a) be printed ;
- (b) be divided into paragraphs numbered consecutively ; and
- (c) be signed by each subscriber of the memorandum ¹[(who shall add his address and description)] of association in the presence of at least one witness who must attest the signature.

Alteration
of articles
by special
resolution.

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles ; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and ²Act No. VII of 1860 or either of them, extend to altering any provisions in Table B³ annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Effect of
alteration in
memorandum
or articles.

⁴[20A. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 9.

² Rep. by the Indian Companies Act, 1866 (10 of 1866).

³ See Appendix I to this Act, p. 434, *infra*.

⁴ Ins. by s. 10 of Act 22 of 1936.

(Part II — Constitution and Incorporation)

and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby]

General Provisions

21 (1) The memorandum and articles shall, when registered bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs and legal representatives to observe all the provisions of the memorandum and of the articles subject to the provisions of this Act

Effect of memorandum and articles

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company

22 The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is situated by the memorandum to be situate and he shall retain and register them

Registration of memorandum and articles

23 (1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and in the case of a limited company that the company is limited

Effect of registration

(2) From the date of incorporation mentioned in the certificate of incorporation the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act

24 (1) A certificate of incorporation given by the registrar in respect of any association be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the association is a company authorised to be registered and duly registered under this Act

Conclusive nature of certificate of incorporation

(2) A declaration by an advocate attorney or pleader entitled to appear before a High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance

(Part II.—Constitution and Incorporation.)

Copies of memorandum and articles to be given to members.

25. (1) Every company shall send to every member, ¹[at his request and within fourteen days thereof] on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

Alteration of memorandum or articles to be noted in every copy.

²[25A. (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be liable to a fine not exceeding ten rupees for each copy so issued and every officer of the company who is knowingly and wilfully in default shall be liable to the like penalty.]

Associations not for Profit.

Power to dispense with " Limited " in name of charitable and other companies.

26. (1) Where it is proved to the satisfaction of the ³[Central Government] that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, ⁴[religion], charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members the ³[Central Government] may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word " Limited " to its name, and the association may be registered accordingly.

(2) A license by the ³[Central Government] under this section may be granted on such conditions and subject to such regulations as the ³[Central Government] thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the ³[Central Government] so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word " Limited " as any part of its name, and of publishing its name, ⁵[and of sending lists of members to the registrar].

(4) A license under this section may at any time be revoked by the ³[Central Government], and upon revocation the registrar shall enter the word " Limited " at the end of the name of the association upon the register, and

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 11, for " at his request, and ".

² Ins. by s. 12, *ibid.*

³ Subs. by the A. O. for " L. G."

⁴ Ins. by the Indian Companies (Amendment) Act, 1926 (33 of 1926), s. 2.

⁵ Subs. by Act 22 of 1936, s. 13, for " and of filing lists of members and directors and managers with the registrar ".

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the association shall cease to enjoy the exemptions and privileges granted by this section

Provided that, before a license is so revoked, the [Central Government] shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation

Companies limited by Guarantee.

27. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void

Provision as to companies limited by guarantee

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby

PART III

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS

Distribution of Share Capital.

28. (1) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company

Nature of shares.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified

Certificate of shares or stock

30. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members

Definition of member

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

Register of
members.

31. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

- (i) the names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;
- (ii) the date at which each person was entered in the register as a member ;
- (iii) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Index of
members of
company.

¹[**31A.** (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register of members make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.]

32. (1) Every company having a share capital shall ²[within eighteen months from its incorporation and thereafter] once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing

Annual list
of members
and
summary.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 14.

² Ins. by s. 15, *ibid.*

(Part III —Share Capital Registration of Unlimited Company as Limited, and Unlimited Liability of Directors)

between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars —

- (a) the amount of the share capital of the company and the number of the shares into which it is divided,
- (b) the number of shares taken from the commencement of the company up to the date of the return,
- (c) the amount called up on each share,
- (d) the total amount of calls received,
- (e) the total amount of calls unpaid,
- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount ¹[in respect of any shares or debentures] since the date of the last return ² or so much thereof as has not been written off at the date of the return]
- (g) the total number of shares forfeited
- (h) the total amount of shares or stock for which share warrants are outstanding at the date of the return
- (i) the total amount of share warrants issued and surrendered respectively since the date of the last return,
- (k) the number of shares or amount of stock comprised in each share warrant,
- (l) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are ³[the managers or managing agents of the company, and the changes in the personnel of the directors managers and managing agents since the last return together with the dates on which they took place], and
- (m) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act

(3) The above list and summary shall be contained in a separate part of the register of members and shall be completed within ⁴[twenty one days] after the day of the first or only ordinary general meeting in the year and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid

¹ Subs. by the Indian Companies (Amendment) Act 1936 (22 of 1936) s. 1 for in respect of any debentures

² Ins. by s. 15 ibid.

³ Subs. by s. 17 ibid. for the managers of the company

⁴ Subs. by s. 15 ibid. for seven days

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

¹[(4) A private company shall send with the annual return required by sub-section (1) a certificate signed by a director or other officer of the company that the company has not, since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause 13 of sub-section (1) of section 2 are not to be included in reckoning the number of fifty.]

²[(5)] If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

Trusts not
to be
entered on
register.

Transfer of
shares.

³[34. (1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be affected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (4) the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

(2) For the purposes of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

(3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip :

Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer on such terms as to indemnity as the directors may think fit.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 15.

² The original sub-section (4) was re-numbered as sub-section (5) by s. 15, *ibid.*

³ Subs. by s. 16, *ibid.*, for the original section.

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(4) If a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal

(5) If default is made in complying with sub section (4) of this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

(6) Nothing in sub section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law

(7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares]

35. A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member be as valid as if he had been a member at the time of the execution of the instrument of transfer

36. (1) The register of members, commencing from the date of the registration of the company ¹[and the index of members] shall be kept at the registered office of the company, and except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe for each inspection ²[Any such member or other person may make extracts therefrom]

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof on payment of six annas for every hundred words or fractional part thereof required to be copied ¹[and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non working days and days on which the transfer books of the company are closed commencing on the day next after the day on which the requirement is received by the company]

²[(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal or default

¹ Ins. by the Indian Companies (Amendment) Act, 1930 (22 of 1930), s. 17

² Subs. by s. 17, *ibid.* for the original sub section

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¹[(2) Nothing in this section shall apply to a private company.]

Effect of
share-
warrant.

44. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

Registration
of name of
bearer of
share-
warrant.

45. The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members ; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

Position of
bearer of
share-
warrant.

46. The bearer of a share-warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

Entries in
register
when share-
warrant
issued.

47. (1) On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

- (i) the fact of the issue of the warrant ;
- (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number ; and
- (iii) the date of the issue of the warrant.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

Surrender of
share-
warrant.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members ; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

Power of
company to
arrange for
different
amounts
being paid
on shares.

49. A company, if so authorised by its articles, may do any one or more of the following things, namely :—

- (1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 20.

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(2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up

(3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others

50. (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say) it may—

Lower of company limited by shares to alter its share capital

(a) increase its share capital by the issue of new shares of such amount as it thinks expedient,

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares

(c) convert all or any of its paid up shares into stock and re convert that stock into paid up shares of any denomination,

(d) sub divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived,

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled

(2) The powers conferred by this section¹ * * * * must be exercised² [by the company in general meeting]

³[(3)] A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act

⁴[(4)] The company shall file with the registrar notice of the exercise of any power referred to in clause (d) or clause (e) of sub section (1) within fifteen days from the exercise thereof]

51. (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or re converted stock into shares it shall within fifteen days of the consolidation and division (conversion or re conversion, file notice with the registrar of the same specifying the share consolidated and divided, or converted, or the stock re converted

Notice to registrar of consolidation of share capital conversion of shares into stock, etc

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day

¹ The words "with respect to sub-division of shares" rep. by the Indian Companies (Amendment) Act 1916 (22 of 1916) s. 21

² Sub. by s. 21, *ibid* for "by special resolution"

³ Original sub sections (3) and (4) were omitted sub-section (4) was re numbered (3) and sub-section (4) was added, by s. 21 *ibid*

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during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Effect of conversion of shares into stock.

52. Where a company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock ; and the register of members of the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Notice of increase of share capital or of members.

53. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing ¹ * * * * of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

²[(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions (if any) subject to which the new shares are to be issued.]

²[(3)] If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Re-organization of share capital.

54. (1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes :

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class ³ * * * * and every resolution so passed shall bind all shareholders of the class.

¹ The words " or in the case of a special resolution the confirmation " rep. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 22.

² Sub-section (2) was ins., and the original sub-section (2) re-numbered (3), by s. 22, *ibid.*

³ The words " and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed " rep. by s. 23, *ibid.*

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(2) Where an order is made under this section a certified copy thereof shall be filed with the registrar within twenty one days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed

Reduction of Share Capital

[54A (1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 55 to 66

Restrictions on purchase of company or loans by company for purchase of its own shares

(2) No company limited by shares other than a private company not being a subsidiary company of a public company shall give, whether directly or indirectly, and whether by means of a loan guarantee the provision of security or otherwise any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company

Provided that nothing in this section shall be taken to prohibit where the lending of money is part of the ordinary business of a company the lending of money by the company in the ordinary course of its business

(3) If a company acts in contravention of this section the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 103B]

55 [(1)] Subject to confirmation by the Court a company limited by shares if so authorised by its articles may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

Reduction of share capital

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up or

(b) either with or without extinguishing or reducing liability on any of its shares cancel any paid up share capital which is lost or unrepresented by available assets, or

(c) either with or without extinguishing or reducing liability on any of its shares pay off any paid up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly

¹ Ins. by the Indian Companies (Amendment) Act 1936 (22 of 1936) s. 21

² Original sub-section (1) of s. 55 was omitted and sub-sections (1) and (2) were re-numbered as (1) and (2) respectively, by s. 2 of s. 21

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¹[(2)] A special resolution under this section is in this Act called a resolution for reducing share capital.

Application to Court for confirming order.

56. Where a company has passed ²* a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

Addition to name of company of "and reduced".

57. On and from the ³[passing] by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from ⁴[the making of the order confirming the reduction], the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company :

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced".

Objections by creditors and settlement of list of objecting creditors.

58. (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

Power to dispense with consent of creditor on security being given for his debt.

59. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

- (i) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

¹ See footnote 2 on pre-page.

² The words "and confirmed" rep. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 26.

³ Subs. by s. 27, *ibid.*, for "confirmation".

⁴ Subs. by s. 27, *ibid.*, for "the presentation of the petition for confirming the reduction".

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- (u) if the company does not admit or is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court

60 The Court if satisfied with respect to every creditor of the company who under this Act is entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured may make an order confirming the reduction on such terms and conditions as it thinks fit

Order confirming reduction.

61 (1) The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing with respect to the share capital of the company as altered by the order the amount of the share capital the number of shares into which it is to be divided and the amount of each share and the amount (if any) at the date of the registration deemed to be paid up on each share shall register the order and minute

Registration of order and minute of reduction

(2) On the registration and not before the resolution for reducing share capital as confirmed by the order so registered shall take effect

(3) Notice of the registration shall be published in such manner as the Court may direct

(4) The registrar shall certify under his hand the registration of the order and minute and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the minute

62 (1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company and shall be valid and alterable as if it had been originally contained therein and shall be embodied in every copy of the memorandum issued after its registration

Minute to form part of memorandum

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

63 (1) A member of the company past or present shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid or (as the case may be) the reduced amount if any, which is to be deemed to have been paid on the share and the amount of the share as fixed by the minute

Liability of members in respect of reduced shares.

Provided that if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is by reason of his ignorance of the

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proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

- (i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration ; and
- (ii) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Publication of reasons for reduction.

65. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

¹ [*Variation of Shareholders' Rights.*]

Rights of holders of special classes of shares.

¹ [66A. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum

¹ This heading and s. 66A. were ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 28.

(Part III —Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors)

or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied the holders of not less in the aggregate than ten per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation may apply to the Court to have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is confirmed by the Court

(2) An application under this section must be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose

(3) On any such application the Court after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application may if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant disallow the variation and shall if not so satisfied confirm the variation

(4) The decision of the Court on any such application shall be final

(5) The company shall within fifteen days after the service on the company of any order made on any such application forward a copy of the order to the registrar and if default is made in complying with this provision the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly]

Registration of Unlimited Company as Limited

67. (1) Subject to the provisions of this section any company registered as unlimited may register under this Act as limited or any company already registered as a limited company may re-register under this Act but the registration of an unlimited company as a limited company shall not affect any debts liabilities obligations or contracts incurred or entered into by, to with or on behalf of, the company before the registration and the debts liabilities obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part

Registration of unlimited company as limited

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

the occasion of the original registration of the company ; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

Power of unlimited company to provide for reserve share capital on re-registration.

68. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up ;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limited company.

69. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

70. (1) In a limited company the liability of the directors or of any director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

(Part III—Share Capital Registration of Unlimited Company as Limited and Unlimited Liability of Directors Part IV—Management and Administration)

71 (1) A limited company, if so authorised by its articles may by special resolution alter its memorandum so as to render unlimited the liability of its directors or of any director

(2) Upon the [passing] of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum * * * * *

PART IV

MANAGEMENT AND ADMINISTRATION

Office and Name

72 (1) A company shall as from the day on which it begins to carry on business or as from the twenty eighth day after the date of its incorporation whichever is the earlier have a registered office to which all communications and notices may be addressed

(2) Notice of the situation of the registered office and of any change therein shall be given within twenty eight days after the date of the incorporation of the company or of the change as the case may be to the registrar who shall record the same

(3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section

(4) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business]

73 Every limited company—

(a) shall print or affix and keep printed or affixed its name on the outside of every office or place in which its business is carried on in a conspicuous position in letters easily legible and in English characters and also if the registered office be situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court in the characters of one of the vernacular languages used in that place,

Publication of name by a limited company

¹ Subs. by the Indian Companies (Amendment) Act 1936 (No. 193) s. 20 for confirmation

² Certain words in sub-section (2) and in section (3) of s. 71 replaced by s. 20 of

³ Sub-section 30 of the original section

(Part IV.—Management and Administration.)

- (b) shall have its name engraven in legible characters on its seal ;
- (c) shall have its name mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels ; invoices, receipts and letters of credit of the company.

Penalties for
non-publica-
tion of name.

74. (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Publication
of authorised
as well as
subscribed
and paid-up
capital.

75. (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid-up.

(2) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

Meetings and Proceedings.

Annual
general
meeting.

76. (1) A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 31, for the original section.

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(2) If default is made in holding a meeting in accordance with the provisions of this section the company and every director or manager of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees

(3) If default is made as aforesaid the Court may on the application of any member of the company call or direct the calling of a general meeting of the company]

¹[77 (1) Every company limited by shares and every company limited by guarantee and having a share capital shall within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business hold a general meeting of the members of the company which shall be called the statutory meeting. Statutory meeting of company

(2) The directors shall at least twenty one days before the day on which the meeting is held forward a report (in this Act referred to as the statutory report) certified as required by this section to every member of the company

(3) The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—

- (a) the total number of shares allotted distinguishing shares allotted as fully or partly paid up otherwise than in cash and stating in the case of shares partly paid up the extent to which they are so paid up and in either case the consideration for which they have been allotted,
- (b) the total amount of cash received by the company in respect of all the shares allotted distinguishing as aforesaid
- (c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources the payments made thereout, and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid on the issue or sale of shares,
- (d) the names addresses and descriptions of the directors auditors managing agents and managers if any and secretary of the company and the changes if any, which have occurred since the date of the incorporation,
- (e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification,
- (f) the extent to which underwriting contract if any have been carried out,

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 22, for section 77.

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- (g) the arrears, if any, due on calls from directors, managing agents and managers ; and
- (h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent if the managing agent is a firm or if the managing agent is a private company a director thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors of the company.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred rupees.

(11) This section shall not apply to a private company.]

Calling of
extraordinary
general
meeting on
requisition.

78. (1) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

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(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists

(3) If the directors do not proceed within twenty one days from the date of the requisition being so deposited to cause a meeting to be called the requisitionists or a majority of them in value may themselves call the meeting but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition

¹[(4)] Any meeting called under this section by the requisitionists shall be called in the same manner as nearly as possible as that in which meetings are to be called by directors

¹[(5)] Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default]

²[79. (1) The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat notwithstanding any provision made in the articles of the company in this behalf —

Provisions
to meeting
and votes.

(a) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing, but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit,

(b) notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression 'Table A' means that table as for the time being in force, but the accidental omission to give notice to or the non receipt of notice by, any member shall not invalidate the proceedings at any meeting,

(c) five members present in person or by proxy or the chairman of the meeting or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll Provided that in the case of a private

¹ Sub-section (4) was omitted original sub-section (a) was renumbered as (4) and sub-section (3) added by the Indian Companies (Amendment) Act 1932 (22 of 1932) s. 23

² Subs. 1 & 31 substituted for the original section

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company if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll ;

(d) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles ; and

(e) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.

(2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf :—

(a) two or more members holding not less than one-tenth of the total share capital paid up or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting ;

(b) in the case of a private company two members and in the case of any other company five members personally present shall be a quorum ;

(c) any member elected by the members present at a meeting may be chairman thereof ;

(d) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote ;

(e) on a poll votes may be given either personally or by proxy ;

(f) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or an attorney duly authorised ; and

(g) a proxy must be a member of the company.

(3) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is given may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any

(Part IV—Management and Administration)

such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.]

80. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company. Representation of company as a meeting of other companies of which it is a member

81. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. Extraordinary and special resolution

[(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given.]

Provided that if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.]

(3) At any meeting at which an extraordinary resolution [or a special resolution] is submitted to be passed, a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution [or a special resolution] is submitted to be passed, a poll may be demanded. *

(5) In a case where if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct, it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company, [or under this Act.]

(7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given

* Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 35, for the original subsection.

* Subs. by s. 35 of the same Act for the words "is submitted to be passed or a special resolution is submitted to be passed or carried."

* Certain words repealed by s. 37 of the same Act.

* Ins. by s. 35 of the same Act.

(Part IV.—Management and Administration.)

and the meeting held in manner provided by the articles, ¹[or under this Act.]

Registration
and copies of
special and
extraordinary
resolutions.

82. (1) A copy of every special and extraordinary resolution shall, within fifteen days from ²[the passing thereof] be printed or typewritten ³[and duly certified under the signature of an officer of the company] and filed with the registrar who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company, who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of
proceedings
of general
meetings
and of its
directors.

83. (1) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

⁴[(4) The books containing the minutes of proceedings of any general meeting of a company held after the ⁵commencement of the Indian Companies (Amendment) Act, 1936, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 35.

² Subs. by s. 36, *ibid.*, for "the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be".

³ Ins. by s. 36, *ibid.*

⁴ Sub-sections (4) to (7) ins. by s. 37, *ibid.*

⁵ The Act came into force on the 15th January, 1937.

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than two hours in each day he allowed for inspection) be open to the inspection of any member without charge

(5) Any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub section (4) at a charge not exceeding six annas for every hundred words

(6) If any inspection required under sub section (4) of this section is refused or if any copy required under sub section (5) of this section is not furnished within the time specified in sub section (5) the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty five rupees and to a further fine to twenty five rupees for every day during which the default continues

(7) In the case of any such refusal or default the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them]

¹[*Directors*

83A ²[(1) Every company shall have at least three directors]

(2) This section shall not apply to a private company ³[except a private company being a subsidiary company of a public company]

83B ⁴[(1)] In default of and subject to any regulations in the articles of a company other than a private company—

- (i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed ,
- (ii) the directors of the company shall be appointed by the members in general meeting , and
- (iii) any casual vacancy occurring among the directors may be filled up by the directors but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director]

⁴[(2) Notwithstanding anything contained in the articles of a company other than a private company not less than two thirds of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors in rotation

¹ This heading and ss 83A and 83B were inserted by the Indian Companies (Amendment) Act 1914 (11 of 1914) s 2

² Sub. by the Indian Companies (Amendment) Act 1930 (2. of 193) s. 35 for the original sub-section

³ Ins by s 38 of s

⁴ The original s 83B was renumbered as sub section (1) of that section and sub section (2) was added by s 33 of s

(Part IV.—Management and Administration.)

Provided that nothing herein contained shall apply to a company incorporated before the ¹commencement of the Indian Companies (Amendment) Act, 1936, where by virtue of the articles of the company the number of directors whose period of office is liable to determination at any time by retirement of directors in rotation falls below the two-thirds proportion mentioned in this section.]

Restrictions
on appoint-
ment or ad-
vertisement
of director.

84. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(i) signed and filed with the registrar a consent in writing to act as such director ; and

(ii) save in the case of ²[companies] not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any) ³[or taken from the company and paid or agreed to pay for his qualification shares] or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any) ³[or made and filed with the registrar an affidavit to the effect that a number of shares, not less than his qualification (if any), are registered in his name] ;

(2) On the application for registration of the memorandum and articles ³[, if any,] of a company the applicant shall file with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company ³[or a company which was a private company before becoming a public company] nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Qualification
of director.

85. (1) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his

¹ The Act came into force on the 15th January, 1937.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 40, for the words " a company limited by guarantee and ".

³ Ins. by s. 40. *ibid.*

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qualification within two months after his appointment, or such shorter time as may be fixed by the articles

1* * * * *

[(2)] If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director

86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid

Validity of acts of directors

[86A. (1) If any person being an undischarged insolvent acts as director or managing agent or manager of any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both

Ineligibility of bankrupt to act as director

(2) In this section the expression "company" includes a company incorporated outside British India which has an established place of business within British India]

[86B. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his offices such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company

Assignment of offices by directors

Provided that the exercise by a director of a power to appoint an alternate or substitute director to act for him during an absence of not less than three months from the district in which meetings of the directors are ordinarily held, if done with the approval of the board of directors shall not be deemed to be an assignment of office within the meaning of this section

Provided always that any such alternate or substitute director shall *ipso facto* vacate office if and when the appointor returns to the district in which meetings of the directors are ordinarily held

Explanation—For the purposes of the provisions to this section, the presidency towns of Calcutta and Madras shall be deemed to be part of the 21 Parganas and Chingleput Districts, respectively, and the presidency town of Bombay shall be deemed to be part of the Bombay Suburban and the Thana districts]

¹ The original sub-section (2) of s. 85 was repealed and sub-section (3) was re-enacted (2) by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 41

² Ins. lvs. 42 & 43

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Avoidance of provisions relieving liability of directors.

¹[**86C.** Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

- (a) in relation to any such provision which is in force at the date of the ²commencement of the Indian Companies (Amendment) Act, 1936, this section shall have effect only on the expiration of a period of six months from that date, and
- (b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force, and
- (c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 281 of this Act in which relief is granted to him by the Court.]

Loans of directors.

¹[**86D.** (1) No company shall make any loan or guarantee any loan made to a director of the company or to a firm of which such director is a partner or to a private company of which such director is a director.

(2) In the event of any contravention of sub-section (1) any director of the company who is a party to such contravention shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or in discharging the guarantee shall be liable jointly and severally for the amount unpaid.

(3) This section shall not apply to a private company (except a private company which is the subsidiary company of a public company) or to a banking company.]

Director not to hold office of profit.

¹[**86E.** No director or firm of which such director is a partner or private company of which such director is a director shall without the consent of the company in general meeting hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker :

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 42.

² The Act came into force on the 15th January, 1937.

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Provided that nothing herein contained shall apply to a director elected or appointed before the commencement of the Indian Companies (Amendment) Act, 1936, in respect of any office of profit under the company held by him at the commencement of the said Act

Explanation—For the purposes of this section the office of managing agent shall not be deemed to be an office of profit under the company.]

[86F. Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.]

Sanction of directors necessary for certain contract

[86G. (1) The company may by extraordinary resolution remove any director, whose period of office is liable to determination at any time by retirement of directors in rotation, before the expiration of his period of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director. A director so removed shall not be re-appointed a director by the board of directors.]

Removal of directors

(2) This section shall not apply to directors elected or appointed before the commencement of the Indian Companies (Amendment) Act 1936.]

[86H. The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting,—

Restrictions on powers of directors

- (a) sell or dispose of the undertaking of the company,
- (b) remit any debt due by a director.]

[86I. (1) The office of a director shall be vacated if—

Vacation of Office of Director

- (a) he fails to obtain within the time specified in sub-section (1) of section 84, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or
- (b) he is found to be of unsound mind by a Court of competent jurisdiction, or
- (c) he is adjudged an insolvent, or
- (d) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or
- (e) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the

¹ The Act came into force on the 15th January 1937.

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 42.

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company other than that of a managing director or manager or a legal or technical adviser or a banker, or

(f) he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is the longer without leave of absence from the board of directors, or

(g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 86D, or

(h) he acts in contravention of section 86F.

(2) Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section.]

Register of
directors,
managers and
managing
agents.

¹[87. (1) Every company shall keep at its registered office a register of its directors, managers and managing agents containing with respect to each of them the following particulars, that is to say :—

(a) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he holds any other directorship or directorships the particulars of such directorship or directorships ;

(b) in the case of a corporation, its corporate name and registered or principal office ; and the full name, address and nationality of each of its directors ; and

(c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.

(2) The company shall within the periods respectively mentioned in this sub-section send to the registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managers or managing agents or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 43, for the original section.

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(4) If any inspection required under this section is refused or if default is made in complying with sub section (1) or sub section (2) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees^a

(5) In the case of any such refusal, the Court on application made by the person to whom inspection has been refused and upon notice to the company may by order direct an immediate inspection of the register.]

[Managing Agents]

[87A. (1) No managing agent shall, after the commencement of the Indian Companies (Amendment) Act, 1936, be appointed to hold office for a term of more than twenty years at a time

Duration of appointment of managing agent

(2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company a managing agent of a company appointed before the commencement of the Indian Companies (Amendment) Act, 1936, shall not continue to hold office after the expiry of twenty years from the commencement of the said Act unless then reappointed thereto or unless he has been reappointed thereto before the expiry of the said twenty years

(3) A managing agent whose office is terminated by virtue of the provisions of sub section (2) shall upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations properly incurred by the managing agent on behalf of the company subject to existing charges and encumbrances if any

(4) The termination of the office of a managing agent by virtue of the provisions of sub section (2) shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination from the company are paid

(5) Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.]

[87B. Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company—

Duration of appointment of managing agent

(a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code and being under the provisions of the Code of Criminal Procedure, 1908, non bailable, and for the purposes of this clause, where the managing agent is a firm or company an offence committed

^a Ins. by the Indian Companies (Amendment) Act 193 (22 of 1936) + 41

^b The Act came into force on the 15th January 1937

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by a member of such firm or a director of or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company :

Provided that a managing agent shall not be liable to be removed under the provisions hereof if the offending member, director or officer as aforesaid is expelled or dismissed by the managing agent within thirty days from the date of his conviction or if his conviction is set aside on appeal ;

(b) the office of a managing agent shall be vacated if he is adjudged insolvent ;

(c) a transfer of his office by a managing agent shall be void unless approved by the company in general meeting :

Provided that in the case of a managing agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm. For the purpose of this proviso ' original partners ' shall mean, in the case of managing agents appointed before the ¹commencement of the Indian Companies (Amendment) Act, XX 1936, 1936, partners who were partners at the date of the commencement of the said Act, and in the case of managing agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment ;

(d) a charge or assignment of his remuneration or any part thereof effected by a managing agent shall be void as against the company ;

(e) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice, however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company : Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management ; and

(f) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after the ¹commencement of the Indian Companies (Amendment) Act, 1936, shall not be valid unless XXII 1936. approved by the company by a resolution at a general meeting of the company notwithstanding anything to the contrary in section 86E :

¹ The Act came into force on the 15th January, 1937.

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Provided that nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth]

¹[87C (1) Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act 1936 the remuneration of the managing agent shall be a sum based on a fixed percent Remuneration of managing agent age of the net annual profits of the company, with provision for a minimum payment in the case of absence of or inadequacy of profits together with an office allowance to be defined in the agreement of management

(2) Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub section (1) shall not be binding on the company unless sanctioned by a special resolution of the company

(3) For the purposes of this section 'net profits' means the profits of the company calculated after allowing for all the usual working charges interest on loans and advances repairs and outgoings depreciation bounties or subsidies received from ²[any Government] or from a public body profits by way of premium on shares sold profits on sale proceeds of forfeited shares or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income tax or super tax or any other tax or duty on income or revenue or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund

(4) This section shall not apply to a private company except a private company which is the subsidiary company of a public company or to any company whose principal business is the business of insurance]

¹[87D (1) No company shall make to a managing agent of the company or to any partner of the firm if the managing agent is a firm or to any director of the private company, if the managing agent is a private company, any loan out of moneys of the company or guarantee any loan made to a managing agent Loans to managing agents

(2) Nothing contained in this section shall apply to any credit held by a managing agent in a current account maintained subject to limits previously approved by the board of directors by the company with the managing agent for the purposes of the company's business

(3) In the event of any contravention of sub section (1) any director of the company who is a party to the making of the loan or giving of the guarantee shall be punishable with fine which may extend to five hundred rupees and

¹ Ins. by the Indian Companies (Amendment) Act 1936 (22 of 1936) s. 41

² The Act came into force on the 1st January 1937

³ Subs. by the A.O. for Govt

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if default is made in repayment of the loan or discharging the guarantee shall be liable jointly and severally for the amount unpaid.

(4) Nothing in this section shall apply to a private company except a private company which is the subsidiary company of a public company.

(5) Except with the consent of three-fourths of the directors present and entitled to vote on the resolution, a managing agent of the company, or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the ¹commencement of the Indian Companies (Amendment) Act, 1936.]

Loans to or
by companies
under the
same
manage-
ment.

²[**87E.** (1) No company incorporated under this Act after the ¹commencement of the Indian Companies (Amendment) Act, 1936, which is under the management of a managing agent shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the commencement of the said Act except by way of renewal of an existing loan or guarantee given make any loan to or guarantee any loan made to any such company :

Provided that nothing herein contained shall apply to loans made or guarantees given by a company to or on behalf of a company under its own management or loans made by or to a company to or by a subsidiary company thereof or to guarantees given by a company on behalf of a subsidiary company thereof.

(2) In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees and shall be jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee.]

Purchase by
company of
shares of
company
under same
managing
agent.

²[**87F.** A company other than an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not purchase shares or debentures of any company under management by the same managing agent, unless the purchase has been previously approved by a unanimous decision of the board of directors of the purchasing company.]

Restriction
on managing
agent's
powers of
manage-
ment.

²[**87G.** A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits fixed by them, a power to invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void.]

¹ The Act came into force on the 15th January, 1937.

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 44.

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[87H A managing agent shall not on his own account engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company]

Managing agent not engage in business competing with the business of managing company

[87I Notwithstanding anything contained in the articles of a company other than a private company the directors if any appointed by the managing agent shall not exceed in number one third of the whole number of directors]

Limit on number of directors appointed by managing agent

Contracts

88 (1) Contracts on behalf of a company may be made as follows (that is to say) —

Form of contracts

(i) any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the company in writing signed by any person acting under its authority, express or implied and may in the same manner be varied or discharged

(ii) any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged

(2) All contracts made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs or legal representatives as the case may be

89 A bill of exchange, hundri or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of or by or on behalf or on account of, the company by any person acting under its authority, express or implied

Bill of exchange and promissory notes

90. A company may, by writing under its common seal, empower any person on either generally or in respect of any specified matters as its attorney, to execute deeds on its behalf in any place [either in or outside British India], and every deed signed by such attorney on behalf of the company, and under his seal where sealing is required shall bind the company, and have the same effect as if it were under its common seal

Execution of deeds

91. (1) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles,

Power of company to transact business outside British India

¹ Inserted by the Indian Companies (Amendment) Act, 1913 (2 of 1913) s. 41

² Substituted by the Indian Companies (Amendment) Act, 1913

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seal for use
abroad.

have for use in any territory, district or place not situate in British India, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situate in British India to affix the same to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Disclosure
of interest
by director.

¹[91A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a ²[director or a member of any specified company or is a member of any specified firm], and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.]

³[(3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours.

¹ Ins. by the Indian Companies (Amendment) Act, 1914 (11 of 1914), s. 3.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 46, for " member of any specified firm or company ".

³ Sub-sections (3) and (4) were ins. by s. 46, *ibid*.

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(4) Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub section (3) shall be liable to a fine not exceeding five hundred rupees]

¹[91B (1) No director shall as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested ^{Prohibition of voting by interested director}
²[nor shall his presence count for the purpose of forming a quorum at the time of any such vote] and if he does so vote his vote shall not be counted

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company

(2) Every director who contravenes the provisions of sub section (1) shall be liable to a fine not exceeding one thousand rupees]

³[(3) This section shall not apply to a private company]

⁴[Provided that where a private company is a subsidiary company of a public company this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company]

⁵[91C (1) Where a company enters into a contract for the appointment of a manager ⁶[or managing agent] of the company in which contract any director of the company is directly or indirectly concerned or interested or varies any such existing contract the company shall, ⁷[within twenty-one days from the date of entering into the contract or the varying of the contract] send an abstract of the terms of such contract or variation as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract or in such variation to every member, and the contract shall be open to the inspection of any member at the registered office of the company ^{D disclosure to members in case of contract appointing a manager}

(2) If a company makes default in complying with the requirements of sub section (1) it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty]

⁸[91D (1) Every manager or other agent of a company other than a private company ⁹[not being the subsidiary company of a public company] who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall at the time of entering into the contract make a memorandum in writing of the terms of the contract and specify therein the person with whom it has been made ^{Contracts by agents of company in which company is an undisclosed principal}

¹ Ins. by the Indian Companies (Amendment) Act, 1914 (11 of 1914) s. 2

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 47

³ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 2

⁴ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 48

⁵ Ins. by s. 49 of 1914

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property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus or during each year of the existence of the business if less than three years so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus ; and]

- (g) the amount (if any) paid or payable as purchase-money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill ; and
- (h) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, ¹[or as discount in respect of shares issued, showing separately the amount, if any, so paid to the managing agents] : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and
- (i) the amount or estimated amount of preliminary expenses ; and
- (k) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and
- (l) the dates of, and parties to, every material contract ²[including contracts relating to the acquisition of property to which clause (f) applies], and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract ²[(except a contract appointing or fixing the remuneration of a managing director or managing agent)] entered into more than two years before the date of issue of the prospectus ; and
- (m) the names and addresses of the auditors (if any) of the company ; and
- (n) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services ren-

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 50, for the words " or the rate of any such commission ".

² Ins., *ibid.*

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dered by him or by the firm in connection with the promotion or formation of the company, and

- (o) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by, ¹[and the rights in respect of capital and dividends attached to] the several classes of shares respectively ¹[and]

- ¹[(p) where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend speak or vote at meetings of the company or of the right to transfer shares or upon the directors of the company in respect of their powers of management the nature and extent of those restrictions,] ²[and]

- ²[(q) where any part of the sums required for the matters set out in sub section (2) of section 101 is to be provided out of sources other than share capital particulars of the amount to be so provided and the sources thereof]

¹[(1A) Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof the prospectus shall set out the following reports in addition to the matters referred to in sub section (1), namely —

- (i) a report by the auditors of the company with respect to the profits of the company including its subsidiary companies if any, so far as the information is available in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates of the dividends if any, paid by the company on each class of shares in the company for each of the said three years giving particulars of each such class of shares on which such dividends have been paid and the source from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus containing a statement of that fact,

- (ii) if the proceeds or any part of the proceeds of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business a report made by an accountant or accountants holding the certificate referred to in section 144 who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus

¹ Ins. by the Indian Companies (Amendment) Act, 1937 (22 of 1937) s. 50

² Ins. by the Repealing and Amending Act, 1937 (34 of 1937) s. 2 and Sch. I

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Provided that if, in the case of a company which has been carrying on business for less than three years, the accounts of the company have been made up only in respect of two years or any shorter period, this sub-section shall have effect as if references to two years or such shorter period were substituted for references to three years.]

¹[(1B) The statement referred to in clause (ff) of sub-section (1) and the report referred to in sub-section (1A) with respect to the profits of a company or business shall show clearly the trading results and all charges and expenses incidental thereto excluding income or profits having no relation to the trading for the period covered and excluding also items of profit or income of a non-recurring nature but including amounts appropriated from profits to such purposes as payment of taxation or reserves.]

2* * * * *

(2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business :

¹[Provided that the said requirements, except the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in pursuance of section 154.]

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

94. For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase-money is not fully paid at the date of issue of the prospectus ; or

(b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or

Meaning of
" vendor "
in section 93.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 59.

² Sub-section (1C), which had been ins. by s. 50, *ibid.*, was rep. by the Repealing and Amending Act, 1937 (20 of 1937), s. 3 and Sch. II.

(Part II — Management and Administration)

(c) the contract depends for its validity or fulfilment on the result of that issue

95 Where any of the property to be acquired by the company is to be taken on lease section 93 shall apply as if the expression 'vendor' included the lessor and the expression 'purchase money' included the consideration for the lease and the expression 'sub-purchaser' included a sub-lessee

Application of section 93 to the case of property taken on lease

96 ¹[(1)] Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93 or purporting to affect him with notice of any contract document or matter not specifically referred to in the prospectus shall be void

Invalidity of certain conditions as to waiver or notice

¹[(2)] It shall not be lawful to issue any form of application for the shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of section 93

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures or

(b) in relation to shares or debentures which were not offered to the public

If any person acts in contravention of the provisions of this subsection he shall be liable to a fine not exceeding five hundred rupees]

97 ¹[(1)] If a prospectus is issued which does not comply with the provisions of section 93 every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding fifty rupees for every day from the day of the issue of the prospectus until a copy complying with the requirements of section 93 is filed]

Saving in certain cases of non-compliance with section 93.

¹[(2)] In the event of non-compliance with ²[or contravention of] any of the requirements of section 93 a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance ²[or contravention] if he proves that—

(a) as regards any matter not disclosed he was not cognizant thereof, or

(b) the non-compliance ²[or contravention] arose from an honest mistake of fact on his part ²[or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the Court were immaterial or was otherwise such as ought in the opinion of the Court having regard to all the circumstances of the case reasonably to be excused]

¹ The original s. 9 was re-numbered as subsection (1) of that section and subsection (2) was added to the Indian Companies (Amendment) Act 1931 (No. 11 of 1931).

² The original s. 9 was re-numbered as subsection (1) of that section and subsection (1) was inserted as s. 10.

³ Ins. 11 s. 10.

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Provided that, in the event of non-compliance with ¹[or contravention of] the requirements contained in clause (n) of sub-section (1) of section 93, no such director or other person shall incur any liability in respect of the non-compliance ¹[or contravention] unless it be proved that he had knowledge of the matters not disclosed.

Obligations
of companies
where no
prospectus
is issued.

98. (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars ²[set out in the form marked I in the Second Schedule].

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act or, in so far as it relates to the allotment of shares to a company limited by guarantee and not having a share capital.

Document
offering
shares or
debentures
for sale to be
deemed a
prospectus.

³[98A. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to, all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public, if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole of the consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 97 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company,

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 52.

² Subs. by s. 53, *ibid.*, for "set out in the Second Sch."

³ Ins. by s. 54, *ibid.*

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and the provisions of section 93 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus,—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected

(4) Where a person making an offer to which this section relates is a company or a firm it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the partners as the case may be, and any such director or partner may sign by his agent authorised in writing]

99 A company shall not at any time vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus except subject to the approval of the company in general meeting

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus

100. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company every person who is a director of the company at the time of the issue of the prospectus and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company and every person who has authorised the issue of the prospectus shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

Liability for statements in prospectus.

- (a) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or was true
- (b) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation Provided that the director, person named as director, promoter or

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person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

- (c) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent; or
- (iii) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

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(5) For the purposes of this section—

- (a) the expression “promoter” means a promoter who was a party to the preparation of the prospectus or the portion thereof containing the misleading or untrue statement but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company
- (b) the expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him

Allotment

101. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof is to be defrayed in any other manner the balance of the sum required to be provided in respect of the matters specified in sub section (2) has been subscribed and the sum of at least five per cent thereof has been paid to or received in cash by the company

Restriction as to allotment.

(2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following namely —

- (a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,
- (b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company
- (c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters and
- (d) working capital

(2A) The amount referred to in sub section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription

(2B) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Reserve Bank of India Act, 1931, until returned in accordance with the provisions of sub section (1) or until the certificate to commence business is obtained under section 103

¹ Sub sections (1) to (2C) were substituted by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 2 for original sub sections (1) and (2).

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(2C) In the event of any contravention of the provisions of sub-section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.]

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of one hundred and ¹[eighty] days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred and ²[ninety] days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent. per annum from the expiration of the one hundred and ³[ninetieth] day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash;

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

102. (1) An allotment made by a company to an applicant in contravention of the provisions of section 101 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting

Effect of
irregular
allotment.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 55, for "twenty".

² Subs. by s. 55, *ibid.*, for "thirty".

³ Subs. by s. 55, *ibid.*, for "thirtieth".

⁴ I.e., the 1st April, 1914, see s. 1 (2), *supra*.

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of the company and not later ¹[or in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment and not later] and shall be so voidable notwithstanding that the company is in course of being wound up

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby. Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

103 (1) A company shall not commence any business or exercise any borrowing powers unless—

Restrictions
on com-
mencement
of business.

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and
- (c) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors in the prescribed form that the foregoing conditions have been complied with; and
- (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration in accordance with the provisions of this section, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

¹ Inserted by the Indian Companies (Amendment) Act, 1934 (22 of 1934) s. 26.

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(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

Return as to
allotments.

104. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

(a) file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act. II of

(3) If default is made in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

(Part II — Management and Administration)

Provided that, in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company or any person liable for the default may apply to the Court for relief, and the Court if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief may make an order extending the time for the filing of the document for such a period as the Court may think proper.

[(1) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non payment of calls]

Commissions and Discounts

105. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, for any shares in the company or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company, if the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount or rate per cent of the commission paid or agreed to be paid is—

- (a) in the case of shares offered to the public for subscription disclosed in the prospectus, or
- (b) in the case of shares not offered to the public for subscription disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice

(2) Save as aforesaid [and save as provided in section 105A] no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares of the company or procuring or agreeing to procure subscriptions whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 37

² Ins. by s. 34A

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a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Power to
issue
shares at a
discount.

¹[105A. (1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

- (a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court ;
- (b) the resolution must specify the maximum rate of discount (not exceeding ten per cent. in any case) at which shares are to be issued ;
- (c) not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business ;
- (d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

(3) If default is made in complying with sub-section (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.]

Issue of
redeemable
preference
shares.

¹[105B. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed :

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of sale proceeds of any property of the company ;
- (b) no such shares shall be redeemed unless they are fully paid ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 59.

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- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid up share capital of the company,
- (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are or are to be liable to be redeemed or, where no definite date is fixed for redemption, the period of notice to be given for redemption

If a company fails to comply with the provisions of this sub section the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand rupees

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of calculating the fees payable under section 249 be deemed to be increased by the issue of shares in pursuance of this sub section

Provided that where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub section unless the old shares are redeemed within one month after the issue of the new shares

(5) Where new shares have been issued in pursuance of the last foregoing sub section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares]

(Part IV.—Management and Administration.)

Further issue
of capital.

¹[105C. Where the directors decide to increase the capital of the company by the issue of further shares such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.]

Statement in
balance-sheet
as to com-
missions and
discounts.

106. Where a company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

Power of
company to
pay interest
out of
capital in
certain cases.

107. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant :

Provided that—

- (1) no such payment shall be made unless the same is authorised by the articles or by special resolution ;
- (2) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the ²[Central Government], which sanction shall be conclusive evidence for the purposes of this section that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section ;
- (3) before sanctioning any such payment, the ²[Central Government] may, at the expense of the company, appoint a person to inquire and report to ³such ²[Central Government] as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 59.

² Subs. by the A. O. for "L. G."

³ Sic. should be "the".

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- (4) the payment shall be made only for such period as may be determined by the ¹[Central Government], and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided,
- (5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the ²[Central Government], may, by notification in the ³[Official Gazette], prescribe,
- (6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
- (7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate,
- (8) nothing in this section shall affect any company to which the Indian Railway Companies Act, 1893, or the Indian Tramways Act, 1902, applies

Certificates of Shares, etc

108. (1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide

Limitation of time for issue of certificates.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

Information as to Mortgages, Charges, etc

109. ⁴[(1)] Every mortgage or charge created after the commencement of this Act by a company and being either—

Certain mortgages and charges to be void if not registered.

- (a) a mortgage or charge for the purpose of securing any issue of debentures, or
- (b) a mortgage or charge on uncalled share capital of the company; or
- (c) a mortgage or charge on any immovable property wherever situate, or any interest therein, or

¹ Substituted by the A. O. for L. G.

² Substituted by the A. O. for "G. G. in C."

³ Substituted by the A. O. for "Gazette of India".

⁴ The original s. 109 was re-numbered as subsection (1) of that section by the Indian Companies (Amendment) Act, 1976 (22 of 1976) s. 6.

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- (d) a mortgage or charge on any book debts of the company ; or
¹[(e) a mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade ; or]
²[(f)] a floating charge on the undertaking or property of the company ;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable :

Provided that—

- (i) in the case of a mortgage or charge created out of British India comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar ; and
- (ii) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and
- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts ; and
- (iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 60.

² The original cl. (e) was re-lettered (f), *ibid.*

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1[(2) Where any mortgage or charge on any property of a company required to be registered under this section has been so registered any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration]

2[In this section " British India " does not include Burma or Aden, whatever the date of the mortgage or charge in question]

3[109A. (1) Where after the commencement of the Indian Companies (Amendment) Act, 1936, a company registered in British India acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed

Registration of charges on properties acquired subject to charge

Provided that if the property is situate and the charge was created outside British India, twenty one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar

(2) If default is made in complying with this section the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of five hundred rupees]

110. Where a series of debentures containing or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the registrar within twenty one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars —

Particulars in case series of debentures created *pari passu*

- (a) the total amount secured by the whole series, and
- (b) the dates of the resolution authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and
- (c) a general description of the property charged, and
- (d) the names of the trustees (if any) for the debenture holders,

¹ Ins. by the Indian Companies (Amendment) Act 1936 (22 of 1936) s. 6.

² Ins. by the A. O.

³ Ins. by Act 22 of 1936 s. 21.

⁴ The Act came into force on the 1st January, 1937.

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together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Particulars in
case of
commission,
etc., on
debentures.

111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

Register of
mortgages
and charges.

112. (1) The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage, or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(2) After making the entry required by sub-section (1), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110 to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

Index to
register of
mortgages
and charges.

113. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Certificate of
registration.

114. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with.

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115 The company shall cause a copy of every certificate of registration given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered

Endorsement of certificate of registration on debenture or certificate of debenture stock

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created

116 (1) It shall be the duty of the company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series requiring registration under section 109 but registration of any such mortgage or charge may be effected on the application of any person interested therein

Duty of company and right of interested party as regards registration

(2) Where the registration is effected on the application of some person other than the company that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration

(3) Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified it shall be the duty of the company to send to the registrar the particulars of such modification, and the provisions of this section as to registration of mortgage or charge shall apply to such modification of the mortgage or charge as aforesaid

117 Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109 to be kept at the registered office of the company. Provided that in the case of a series of uniform debentures a copy of one such debenture shall be sufficient

Copy of instrument creating mortgage or charge to be kept at registered office

118 (1) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument he shall within fifteen days from the date of the order or of the appointment under the powers contained in the instrument file notice of the fact with the registrar and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges

Registration of appointment of receiver

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

119 (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument and who has taken possession shall once in every half year while he remains in possession and

Register of mortgages and charges

(Part IV.—Management and Administration.)

also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall, also, on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar, shall enter the notice in the register of mortgages and charges.

¹[(2) Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

(3) If default is made in complying with the requirements of this section, the company and every director, manager, managing agent, secretary or other officer of the company and every receiver who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding two hundred rupees.]

Rectification
of register of
mortgages.

120. ²[(1)] The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, ³[or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created] was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or share-holders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.

³[(2) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.]

Registration
or satisfaction
of mortgages
and charges.

⁴[**121.** (1) It shall be the duty of the company to give intimation to the registrar of the payment or satisfaction of any charge or mortgage created by the company and requiring registration under section 109 within twenty-one days from the date of the payment or satisfaction thereof.

(2) The registrar shall on receipt of such intimation cause a notice to be sent to the mortgagee calling upon him to show cause, within a time (not

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 63, for the original sub-section.

² The original s. 120 was re-numbered as sub-section (1) of that section by s. 64, *ibid.*

³ Ins. by s. 64, *ibid.*

⁴ Subs. by s. 65, *ibid.*, for the original section.

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exceeding fourteen days) to be fixed by such notice why the payment or satisfaction of the charge or mortgage should not be recorded

(3) The registrar shall if no cause is shown order that a memorandum of satisfaction be entered on the register and shall if required furnish the company with a copy thereof

(4) Where cause is shown the registrar shall record a note to that effect in the register and shall inform the company that he has done so]

122 (1) If any company makes default in filing with the registrar for Penalties. registration the particulars—

(a) of any mortgage or charge created by the company or

1[(b) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A, or]

2[(c)] of the issues of debentures of a series

requiring registration with the registrar under the foregoing provisions of this Act then unless the registration has been effected on the application of some other person the company and every officer of the company or other person who is knowingly a party to the default shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues

(2) Subject as aforesaid if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company the company and every officer of the company who knowingly and wilfully authorises or permits the default shall without prejudice to any other liability be liable on conviction to a fine not exceeding one thousand rupees

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it he shall without prejudice to any other liability be liable on conviction to a fine not exceeding one thousand rupees

123 (1) Every ^{2*} company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company 3[and all floating charges on the undertaking or on any property of the company] giving in each case a short description of the property mortgaged or charged the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto

(2) If any director manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be

¹ (1) & (2) was inserted in the original clause (1) as lettered (1) by the Indian Companies Bill, 1913 (Amendment) Act 1913 (No. 2 of 1913) s. 66.

² The word "limited" was inserted in 1938.

³ It is a company.

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made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

124. (1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

125. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

Debentures and Floating Charges.

126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

Right to inspect the register of debenture-holders and to have copies of trust-deed.

Perpetual debentures.

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are made irredeemable or redeemable only on the happening of a contingency, however remote or on the expiration of a period however long

127 (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns) shall have power and shall be deemed always to have had power to keep the debentures alive for the purposes of re-issue and where a company has purported to exercise such a power the company shall have power and shall be deemed always to have had power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have and shall be deemed always to have had the same rights and priorities as if the debentures had not previously been issued

Power to re-issue redeemed debentures in certain cases

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the commencement of this Act, been transferred to a nominee of the company a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section

(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise the debentures shall not be deemed to have been redeemed by retention only of the account if the company having ceased to be in debit whilst the debentures remained so deposited

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to or deemed to have been possessed by, a company whether the re-issue or issue was made before or after the commencement of this Act shall be treated as the issue of a new debenture for the purposes of stamp duty but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped but in any such case the company shall be liable to pay the proper stamp-duty and penalty

(5) Nothing in this section shall prejudice—

(a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February 1910 as between the parties to the proceedings in which the decree or order was made, and any appeal from any

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such decree or order shall be decided as if this Act had not been passed ; or

- (b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

128. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

129. (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Statements, Books and Accounts.

130. (1) Every company shall cause to be kept proper books of account with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;
- (b) all sales and purchases of goods by the company ;
- (c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.

(3) In the case of a company managed by a managing agent the managing agent, or where the managing agent is a firm or company, the partner or director of such firm or company and in any other case the director or directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section,

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 68, for the original section.

Specific performance of contract to subscribe for debentures. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

Books to be kept by company and penalty for not keeping proper books.

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shall in respect of such offence be liable to a fine not exceeding one thousand rupees]

131 ¹[(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period in the case of the first account since the incorporation of the company and in any other case since the preceding account made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests outside British India by more than twelve months

Annual balance sheet

Provided that the registrar may for any special reason extend the period by a period not exceeding three months]

(2) The balance sheet ²[and the profit and loss account or income and expenditure account] shall be audited by the auditor of the company as hereinafter provided and the auditor's report shall be attached thereto or there shall be inserted at the foot thereof a reference to the report and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company

(3) Every company other than a private company shall send a copy of ³[such balance sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditor's report] to the registered address of every member of the company at least ⁴[fourteen days] before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least ⁵[fourteen days] before that meeting

* * * * *

⁶[131A (1) The directors shall make out and attach to every balance sheet a report with respect to the state of the company's affairs the amount if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund General Reserve or Reserve Account shown specifically on the balance sheet or to a Reserve Fund General Reserve or Reserve Account to be shown specifically in a subsequent balance sheet

Directors' report

(2) The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors

¹ Sub s by the Indian Companies (Amendment) Act 1926 (2) of 1926 s 17 (1) (a) (i) original sub section

² Ins by s 63, (1) f

³ Sub s by s 63 (1) f for such balance sheet so audited

⁴ Sub s by s 63 (1) f for seven days

⁵ Sub section (1) rep by s 63 (1) f

⁶ Ins by s 131A (1)

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(3) The provisions of sub-section (3) of section 130 shall apply to any person being a director who is knowingly and wilfully guilty of a default in complying with this section.]

Contents of
balance-sheet.

132. (1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

¹[(3) The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the managing agent, if any, and the directors respectively as remuneration for their services and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto.]

Balance-sheet
to include
particulars
as to sub-
sidiary com-
panies.

²[**132A.** (1) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary company or companies, and a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet of the holding company is signed stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts :

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner :

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 71.

² Ins. by s. 72, *ibid.*

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Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares stocks debentures or other securities shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent or more of the shares of another company

(2) If, in the case of a subsidiary company, the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company, shall contain particulars of the manner in which the report is qualified

(3) For the purposes of this section the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate or if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement

(5) The holding company may by a resolution authorize representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours

(6) The rights conferred by section 133 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company]

133 (1) Save as provided by sub-section (2) the balance sheet of (and profit and loss account or income and expenditure account) shall—

authentication of balance-sheet

- (a) in the case of a holding company, be signed by the manager (if or managing agent) (if any) and where there are more than three directors of the company, by at least three of those directors and where there are not more than three directors by all the directors,

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(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager ¹[or managing agent] (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less than the number of directors whose signatures are required by sub-section (1), then the balance-sheet ¹[and profit and loss account or income and expenditure account] shall be signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet ¹[and profit and loss account or income and expenditure account] a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

²[(3) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure account as required by section 131 or if any balance-sheet and profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees.]

Copy of
balance-sheet
to be for-
warded to
the registrar.

134. (1) ³[After the balance-sheet and profit and loss account have] been laid before the company at the general meeting a copy ⁴[of the balance-sheet] signed by the manager or secretary of the company shall be filed with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

Right of
member of
company to

135. Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet ⁵[and the

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 73.

² Subs. by s. 73, *ibid.*, for the original sub-section.

³ Subs. by s. 74, *ibid.*, for " After the balance-sheet has ".

⁴ Subs. by s. 74, *ibid.*, for " thereof ".

⁵ Ins. by s. 75, *ibid.*

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profit and loss account or the income and expenditure account] and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof

copies of the balance sheet and the audit report

Statement to be published by Banking and certain other Companies

136 (1) Every company being a limited banking company or an insurance company or a deposit provident or benefit society shall before it commences business and also on the first Monday in February and the first Monday in August in every year during which it carries on business make a statement in the form marked G in the Third Schedule or as near thereto as circumstances will admit

Certain companies to publish statement in schedule

(2) A copy of the statement [together with a copy of the last audited balance sheet laid before the members of the company] shall be displayed and, until the display of the next following statement kept displayed in a conspicuous place in the registered office of the company and in every branch office or place where the business of the company is carried on

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas

(4) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act 1912, as the case may be, as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions

Investigation by the Registrar

137. (1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order

Power of registrar to call for information or explanation

(2) On the receipt of an order under sub-section (1) it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power

¹ Inserted by the Indian Companies (Amendment) Act 1931 (22 of 1931) s. 7.

² These two Acts have been repealed by the Insurance Act 1938 (4 of 1938), s. 180. See s. 180(2) of that Act.

s. 180(2) of that Act

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(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence ¹[, and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit.]

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him ; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to the ²[Central Government].

¹[(6) If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections (2), (3) and (5) of this section shall apply to such order. If upon investigation the registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.

(7) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act.]

Inspection and Audit.

Investigation
of affairs of
company by
inspectors.

138. The ²[Central Government] may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the ²[Central Government] may direct—

- (i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued ;
- (ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 77.

² Subs. by the A. O. for " L. G."

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(iii) in the case of a company not having a share capital on the application of not less than one fifth in number of the persons on the company's register of members,

(iv) in the case of any company on a report by the registrar under section 137 sub section (5)

139 An application by members of a company under section 138 shall be supported by such evidence as the [Central Government] may require for the purpose of showing that the applicants have good reason for and are not actuated by malicious motives in requiring the investigation, and the [Central Government] may before appointing an inspector require the applicants to give security for payment of the costs of the inquiry

Application for inspection to be supported by evidence

140 (1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company

Inspection of books and examination of officers.

(2) An inspector may examine on oath any such person in relation to its business and may administer an oath accordingly

(3) If any person refuses to produce any book or document which under this section it is his duty to produce or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence

141 (1) On the conclusion of the investigation the inspectors shall report their opinion to the [Central Government] and a copy of the report shall be forwarded by the [Central Government] [to the registrar and another copy] to the registered office of the company and a further copy shall, at the request of the applicants for the investigation be delivered to them

Results of examination how dealt with

(2) The report shall be written or printed as the [Central Government] directs

(3) All expenses of and incidental to the investigation shall be defrayed by the applicants unless the [Central Government] directs the same to be paid by the company, which the [Central Government] is hereby authorised to do

[Provided that the expenses of and incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land revenue

(4) The registrar shall keep the copy of the report sent to him with the records of the company in his custody]

[141A (1) If from any report made under section 138 it appears to the [Central Government] that any person has been guilty of any offence

In relation of offence

¹ Subs. by the A. O. for L. G.

² Ins. by the Indian Companies (Amendment) Act 1937 (22 of 1937) s. 74

³ Ins. by s. 79 of J.

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in relation to the company for which he is criminally liable, the ¹[Central Government] shall refer the matter to the Advocate General or the Public Prosecutor.

(2) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(3) For the purposes of sub-section (2), the expression “agents” in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.]

Power of
company to
appoint
inspectors.

142. (1) A company may by a special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the ¹[Central Government], except that, instead of reporting to the ¹[Central Government], they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the ¹[Central Government].

Report of
inspectors to
be evidence.

143. A copy of the report of any inspectors appointed under this Act authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Qualifications
and appoint-
ment of
auditors.

144. (1) No person shall be appointed or act as an auditor of any company other than a private company ²[not being the subsidiary company of a public company] unless he holds a certificate from the ³[Central Government] entitling him to act as an auditor of companies :

¹ Subs. by the A. O. for “L. G.”

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 80.

³ Subs. by the A. O. for the words “G. G. in C.”, which had been subs. for the words “L. G.” by the Indian Companies (Amendment) Act, 1930 (19 of 1930), s. 2.

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¹[Provided that a firm ²[whereof all the partners practising in India] hold such certificates may be appointed by its firm name to be auditor of a company, and may act in its firm name]

³[(2) The ⁴[Central Government] may by notification in the ⁵[Official Gazette] and after previous publication make rule ⁶ providing for the grant renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant renewal or cancellation

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant

(2A) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the maintenance of a Register of Accountants entitled to apply for such certificates

(b) prescribe the qualifications for enrolment on the Register and the fees therefor,

(c) provide for the examination of candidates for enrolment and prescribe the fees to be paid by examinees

(d) prescribe the circumstances in which the name of any person may be removed from or restored to the Register

(e) provide for the establishment constitution and procedure of an Indian Accountancy Board consisting of persons representing the interests principally affected or having special knowledge of accountancy in India to advise [it] on all matters of administration relating to accountancy and to assist [it] in maintaining the standards of qualification and conduct of persons enrolled on the Register and

(f) provide for the establishment constitution and procedure of local accountancy boards at such centres as the ⁴[Central Government] may select to advise [it] and the Indian Accountancy Board on any matter that may be referred to them

(2B) The holder of a certificate granted under this section shall be entitled to be appointed and act as an auditor of companies throughout British India]

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting

¹ Subs. by the Indian Companies (Amendment) Act 1920 (19 of 1920) s. 2 for the original proviso

² Subs. by the Indian Companies (Supplementary Amendment) Act 1932 (1 of 1932) s. 2 for whereof the partners all

³ Subs. sections (2) (2A) and (2B) were subs. by Act I of 1950 s. 2 for the original subsection (2)

⁴ Subs. by the A. O. for C. G. in C.

⁵ Subs. by the A. O. for Gazette of India

⁶ See the Auditors (Certificates) Rules 1932 published with the Act and a copy of the Act of India (Commerce Department) (Legislation of Accountants) No. 213 H.T. & L. (A 31) dated 26th March 1932

⁷ Subs. by the A. O. for C. G. in C.

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(4) If an appointment of an auditor is not made at an annual general meeting, the ¹[Central Government] may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons : that is to say,

- (i) a director or officer of the company ; and
- (ii) a partner of such director or officer ; and
- (iii) in the case of a company other than a private company, ²[not being the subsidiary company of a public company] any person in the employment of such director or officer ; ²[and
- (iv) any person indebted to the company ;]

shall not be appointed auditors of the company ²[and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated].

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting :

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

¹ Subs. by the A. O. for "L. G."

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 80.

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145 (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors Powers and duties of auditors

(2) The auditors shall make a report to the members of the company on the accounts examined by them and on every balance sheet [and profit and loss account] laid before the company in general meeting during their tenure of office and the report shall state —

(a) whether or not they have obtained all the information and explanations they have required and

[(b) whether or not in their opinion the balance sheet and the profit and loss account referred to in the report are drawn up in conformity with the law, and]

(c) whether [or not] such balance sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company [and]

(d) whether in their opinion books of account have been kept by the company as required by section 130.]

[(2A) Where any of the matters referred to in clauses (a) (b) (c) and (d) of sub-section (2) is answered in the negative or with a qualification the report shall state the reason for such answer.]

(3) In the case of a banking company if the company has branch banks beyond the limits of India it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India

[(4) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts]

(5) If any auditors' report is made which does not comply with the requirements of this section every auditor who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to one hundred rupees.]

146 (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets [and profit and loss accounts] of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company Rights of preference shareholders etc. as to receipt of reports

* Ins. by the Indian Companies (Amendment) Act, 1922 of 1922, s. 31

* Subs. by s. 31 of the same Act, 1922

* Ins. by s. 32 of the same Act, 1922

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(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act :

¹[Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company.]

Carrying on business with less than the legal minimum of members.

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

147. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

Service and Authentication of Documents.

Service of documents on company.

148. A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

Service of documents on registrar.

149. A document may be served on the registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

Authentication of documents.

150. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Tables, Forms and Rules as to prescribed matters.

Application and alteration of tables and forms, and power to make rules as to prescribed matters.

151. (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The ²[Central Government] may alter any of the tables and forms in the First Schedule, so that ³[it] does not increase the amount of fees payable to the registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(3) Any such table or form, when altered, shall be published in the ⁴[Official Gazette], and on such publication shall have effect as if enacted in this Act,

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 82.

² Subs. by the A. O. for " G. G. in C. "

³ Subs. by the A. O. for " he ".

⁴ Subs. by the A. O. for " Gazette of India ".

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but no alteration made by the ¹[Central Government] in Table A in the First Schedule shall affect any company registered before the alteration or repeal, as respects that company, any portion of that table

(4) In addition to the powers hereinbefore conferred by this section the ¹[Central Government] may make rules providing for all or any matters which by this Act are to be prescribed by ²[its] authority

(5) Every such rule shall be published in the ³[Official Gazette] and on such publication shall have effect as if enacted in this Act

Arbitration and Compromise

152 (1) A company may by written agreement refer to arbitration in accordance with the Indian Arbitration Act 1899 an existing or future difference between itself and any other company or person

Power for companies to refer matters to arbitration

(2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by their directors or other managing body

(3) The provisions of the Indian Arbitration Act 1899, other than those restricting the application of the Act in respect of the subject matter of the arbitration shall apply to all arbitrations between companies and persons in pursuance of this Act

153 (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them the Court may on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up of the liquidator order a meeting of the creditors or class of creditors or of the members of the company or class of members as the case may be to be called held and conducted in such manner as the Court directs

Power to compromise with creditors and members

(2) If a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members as the case may be present either in person or by proxy at the meeting agree to any compromise or arrangement the compromise or arrangement shall if sanctioned by the Court be binding on all the creditors or the class of creditors, or on all the members or class of members as the case may be and also on the company, or in the case of a company in the course of being wound up, on the liquidator and contributories of the company

⁴(3) An order made under subsection (2) shall have no effect until a certified copy of the order has been filed with the registrar and a copy of every such order shall be annexed to every copy of the memorandum of the

¹ Subs. by the A. O. for G. O. in C

² Subs. by the A. O. for G. O. in C

³ Subs. by the A. O. for G. O. in C

⁴ Subsections (3) to (5) were inserted by the Indian Companies (Amendment) Act 1924 (22 of 1924) s. 63

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company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of.]

¹[(6)] In this section the expression "company" means any company liable to be wound up under this Act ²[and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.]

²[(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court.]

Provisions for
facilitating
arrangements
and compro-
mises.

³[153A. (1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a 'transferor company') is to be transferred to another company (in this section referred to as 'the transferee company'), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;

¹ The original sub-section (3) was re-numbered as sub-section (6) by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 83.

² Ins. by s. 83, *ibid.*

³ Ins. by s. 84, *ibid.*

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- (d) the dissolution, without winding up, of any transferor company ;
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs dissent from the compromise or arrangement ;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect

(3) Where an order is made under this section every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within fourteen days after the completion of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees

(f) In this section the expression ' property ' includes property rights and powers of every description, and the expression ' liabilities ' includes duties.

(5) Notwithstanding the provisions of sub-section (1) of section 153, the expression " company " in this section does not include any company other than a company within the meaning of this Act]

[153B. (1) Where a scheme or contract involving the transfer of shares in or any class of shares in a company (in this section referred to as ' the transferor company ') to another company (whether a company within the meaning of this Act or not (in this section referred to as the ' transferee company ')), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than three-fourths in value of the shares affected, the transferee company may at any time within two months after the expiration of the said four months give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company

(Part IV.—Management and Administration.)

Provided that, where any such scheme or contract has been so approved at any time before the commencement of the Indian Companies (Amendment) Act, 1936, the Court may by order, on an application made to it by the transferee company within two months after the commencement of that Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression 'dissenting shareholder' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.]

Conversion of private company into public company.

Conversion of
private
company
into public
company.

²[154. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (13) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company, shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, file with the registrar a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the form marked II in the Second Schedule.

¹ The Act came into force on the 15th January, 1937.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 85, for the original section.

(Part IV —Management and Administration Part I —Winding up)

(2) If default is made in complying with sub section (1) of this section the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five hundred rupees

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in this Act and thereupon the provisions of this Act shall apply to the company as if it were not a private company

Provided that the Court on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid]

PART V

WINDING UP

Preliminary

155 (1) The winding up of a company may be either—

- (i) by the Court, or
- (ii) voluntary or
- (iii) subject to the supervision of the Court

Mode of
winding up

(2) The provisions of this Act with respect to winding up apply unless the contrary appears to the winding up of a company in any of these modes

Contributories

156 (1) In the event of a company being wound up every present and past member shall subject to the provisions of this section be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs charges and expenses of the winding up, and for the adjustment of the rights of the contributors among themselves with the qualifications following (that is to say) —

Liability as
contributor
of present
and past
members.

- (i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up
- (ii) a past member shall not be liable to contribute in respect of any debt, or liability of the company contracted after he ceased to be a member,

(Part IV.—Management and Administration.)

Provided that, where any such scheme or contract has been so approved at any time before the commencement of the Indian Companies (Amendment) Act, 1936, the Court may by order, on an application made to it by the transferee company within two months after the commencement of that Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression 'dissenting shareholder' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.]

Conversion of private company into public company.

Conversion of
private
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²[154. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (13) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company, shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, file with the registrar a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the form marked II in the Second Schedule.

¹ The Act came into force on the 15th January, 1937.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 85, for the original section.

(Part V—Winding up)

liabilities of the company, and the costs, charges and expenses of the winding up

158 The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories includes any person alleged to be a contributory

Meaning of contributory

159 ¹[(1) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator]

Nature of liability of contributory

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the Presidency towns

160 (1) If a contributory dies either before or after he has been placed on the list of contributories his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly

Contributories in case of death of member

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them proceedings may be taken for administering the property of the deceased contributory whether moveable or immoveable, or both and of compelling payment thereout of the money due

²[(3) For the purposes of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs]

161 If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories then—

Contributories in case of insolvency of member

(1) his assignees shall represent him for all the purposes of the winding up and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made

Winding up by Court

162 A company may be wound up by the Court—

(a) if the company has by special resolution resolved that the company be wound up by the Court

(b) if default is made in filing the statutory report or in holding the statutory meeting

Circumstances in which company may be wound up by Court

¹ S. 36 by the Indian Companies (Amendment) Act 1930 (2 of 1930) s. 86 for the original section

² Ins. by s. 87 ibid

(Part V.—Winding up.)

- (iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;
- (iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member ;
- (v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;
- (vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;
- (vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Liability of
directors
whose
liability is
unlimited.

157. In the winding up of a limited company any director whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

- (i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;
- (ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;
- (iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and

(Part V—Winding up)

liabilities of the company, and the costs, charges and expenses of the winding up

158 The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories includes any person alleged to be a contributory

Meaning of contributory

159 ¹[(1) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator]

Nature of liability of contributory

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the Presidency towns

160. (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly

Contributories in case of death of member

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the money due

²[(3) For the purposes of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs]

161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

Contributories in case of insolvency of member

(1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company, and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made

Winding up by Court

162. A company may be wound up by the Court—

(i) if the company has by special resolution resolved that the company be wound up by the Court

(ii) if default is made in filing the statutory report or in holding the statutory meeting

Circumstances in which company may be wound up by Court

¹ Subs. by the Indian Companies (Amendment) Act, 1930 (22 of 1930), s. 86, for the original sub-section

² Ins. by s. 47, *ibid*

(Part V.—Winding up.)

- (iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;
- (iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member ;
- (v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;
- (vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;
- (vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

157. In the winding up of a limited company any director whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

- (i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;
- (ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;
- (iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and

Liability of
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(Part V—Winding up)

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158 The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory

Meaning of 'contributory'

159 ¹[(1) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator]

Nature of liability of contributory

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the Presidency towns

160. (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly

Contributories in case of death of member

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the money due

²[(d) For the purposes of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs]

161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

Contributories in case of insolvency of member

(1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company, and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made

Winding up by Court

162. A company may be wound up by the Court—

(i) if the company has by special resolution resolved that the company be wound up by the Court.

(ii) if default is made in filing the statutory report or in holding the statutory meeting

Circumstances in which company may be wound up by Court

¹ Subs. by the Indian Companies (Amendment) Act, 1931 (22 of 1936), s. 86, for the original sub-section

² Ins. by s. 87, *ibid*

(Part V.—Winding up.)

- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year :
- (iv) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven :
- (v) if the company is unable to pay its debts :
- (vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

Company
when deemed
unable to
pay its debts.

163. ¹[(1)] A company shall be deemed to be unable to pay its debts—

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, ²[by causing the same to be delivered by registered post or otherwise] at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or
- (ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part ; or
- (iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

³[(2) The demand referred to in clause (i) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal adviser duly authorised on his behalf, or in the case of a firm if it is signed by such agent or by a legal adviser or any one member of the firm on behalf of the firm.]

Winding up
may be
referred to
District
Court.

164. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court ; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be " the Court " within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

Transfer of
winding up
from one
District

165. If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up

¹ The original s. 163 was re-numbered as sub-section (1) of that section by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 88.

² Subs. by s. 88, *ibid*, for " by leaving the same ".

³ Ins. by s. 88, *ibid*.

(Part V —Winding up)

companies, the High Court may transfer the same to such other Court and ^{Court to} thereupon the winding up shall proceed in such other District Court ^{another}

166. An application to the Court for the winding up of a company shall ^{Provisions} be by petition presented, subject to the provisions of this section, either by ^{as to appli-} the company, or by any creditor or creditors (including any contingent or ^{cations for} prospective creditor or creditors), contributory or contributories, or by all ^{winding up.} or any of those parties, together or separately ¹, or by the registrar]

Provided that—

(a) a contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, or

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up or have devolved on him through the death of a former holder,

¹[(aa) the registrar shall not be entitled to present a petition for winding up a company—

(i) except on the ground that from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 138 it appears that the company is unable to pay its debts, and

(ii) unless the previous sanction of the ²[Central Government] has been obtained to the presentation of the petition

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard]

(b) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held,

(c) the Court shall not give a bearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court

¹ Ins by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 89

² Subs by the A O for 'L G'

(Part V.—Winding up.)

Effect of
winding up
order.

167. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of
winding up
by Court.

168. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Court may
grant injunction.

169. The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

Powers of
Court on
hearing
petition.

170. (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

¹ (3) Where the Court makes an order for the winding up of a company it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver.]

Suits stayed
on winding
up order.

171. When a winding up order has been made ²[or a provisional liquidator has been appointed] no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Vacancy in
the office of
liquidator.

³ 171A. (1) For the purposes of this Act, so far as it relates to the winding up companies by the Court, the term "official receiver" means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the ⁴Central Government] may, by notification in the ⁵[Official Gazette], appoint for the purpose.

(2) On the making of a winding up order, the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.

(3) The official receiver shall as such official liquidator forthwith take into his custody and control all the books, documents and the assets of the company.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 90.

² Ins. by s. 91, *ibid.*

³ Ins. by s. 92, *ibid.*

⁴ Subs. by the A. O. for "L. G."

⁵ Subs. by the A. O. for "local official Gazette".

(Part V —Winding up)

(4) The official receiver shall be entitled to such remuneration as the Court shall fix]

172 ¹[(1) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the registrar a copy of the order within a month from the date of the making of the order]

Copy of winding up order to be filed with registrar

(2) On the filing of a copy of a winding up order the registrar shall make a minute thereof in his books relating to the company and shall notify in the ²[Official Gazette] that such an order has been made

(3) Such order shall be deemed to be notice of discharge to the servants of the company except when the business of the company is continued

173 The Court may at any time after an order for winding up on the application of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit

Power of Court to stay winding up

174 The Court may, as to all matters relating to a winding up have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence

Court may have regard to wishes of creditors or contributories

Official Liquidators

175 (1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose the Court may appoint a person or persons ³[other than the official receiver] to be called an official liquidator or official liquidators

Appointment of official liquidator

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up ⁴[but shall before making any such appointment give notice to the company unless for reasons to be recorded it thinks fit to dispense with notice]

(3) If more persons than one are appointed to the office of official liquidator the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons

(4) The Court may determine whether any and what security is to be given by any official liquidator on his appointment

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment. Provided that nothing in this sub section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid

¹ Subs. by the Indian Companies (Amendment) Act 1936 (22 of 1936) s. 93 for the original sub section.

² Subs. by the A. O. for local official Gazette

³ Ins. by Act 1 of 1913 s. 94

(Part V.—Winding up.)

(6) A receiver shall not be appointed of assets in the hands of an official liquidator.

Resignations,
removals,
filling up
vacancies
and com-
pensation.

176. (1) Any official liquidator may resign or be removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court ¹[and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.]

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remunerations shall be distributed amongst them in such proportions as the Court directs.

Official
liquidator.

177. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

Statement of
affairs to be
made to the
liquidator.

²[**177A.** (1) Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company verified by an affidavit and containing the following particulars, namely:—

- (a) the assets of the company, stating separately the cash balance in hand and at the bank, if any;
- (b) the debts and liabilities;
- (c) the names, residences and occupations of the creditors stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when they were given;
- (d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary, manager or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been directors or officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 95.

² Ins. by s. 96, *ibid.*

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the opinion of the official liquidator capable of giving the information required,

- (d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates

(3) The statement shall be submitted within twenty one days from the relevant date, or within such extended time as the official liquidator or the Court may for special reasons appoint

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court

(5) If any person without reasonable excuse knowingly and wilfully makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code and shall, on the application of the liquidator or of the official receiver, be punishable accordingly

(8) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order]

¹[177B. (1) In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 177A, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately under the heading of assets particulars of—
- (i) cash and negotiable securities,
 - (ii) debts due from contributories,

¹ Ins by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s 98

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- (iii) debts due to and securities, if any, available to the company ;
- (iv) moveable and immoveable properties belonging to the company ;
- (v) unpaid calls ; and
- (b) if the company has failed, as to the causes of the failure ; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which in his opinion it is desirable to bring to the notice of the Court.]

Custody of
company's
property.

178. (1) The official liquidator ¹[whether appointed provisionally or not] shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

²[(2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.]

Committee of
Inspection in
compulsory
winding up.

³[178A. (1) The official liquidator shall within a month from the date of the order for the winding up of a company convene a meeting of the creditors of the company (as ascertained from the books and documents of the company) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee, if appointed.

(2) The official liquidator shall within a week from the date of the creditors' meeting convene a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications.

(3) If the contributories do not accept the decision of the creditors in its entirety, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and, if so, what shall be the composition of the committee, and who shall be members thereof.

(4) A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 97.

² Subs. by s. 97, *ibid.*, for the original sub-section.

³ Ins. by s. 98, *ibid.*

(Part V—Winding up)

(5) The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.

(6) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(7) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(8) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(9) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories as the case may be his office shall thereupon become vacant.

(10) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors or of contributories if he represents contributories of which seven days notice has been given, stating the object of the meeting.

(11) On a vacancy occurring in the committee the liquidator shall forth with summon a meeting of creditors or of contributories as the case may require, to fill the vacancy and the meeting may by resolution, re appoint the same or appoint another creditor or contributory to fill the vacancy.

(12) The continuing members of the committee if not less than two, may act notwithstanding any vacancy in the committee.]

179 The official liquidator shall have power, with the sanction of the Court to do the following things —

Powers of
official
liquidator.

(a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company,

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same,

(c) to sell the immovable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels,

(d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal,

(e) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors,

(Part V.—Winding up.)

- (f) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;
- (g) to raise on the security of the assets of the company any money requisite ;
- (h) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself : Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator General.
- (i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of official liquidator.

180. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court. and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Provision for legal assistance to official liquidator.

181. The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties : Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court.

182. ¹[(1)] The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

²[(2)] Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.

(3) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(4) The Court shall cause the account to be audited in such manner as it thinks fit and for the purpose of the audit the liquidator shall furnish the

¹ The original s. 182 was re-numbered as sub-section (1) of that section by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 99.

² Sub-sections (2) to (5) were added, *ibid.*

(Part V—Winding up)

Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator

(5) When the account has been audited one copy thereof shall be filed and kept by the Court and the other copy shall be delivered to the registrar for filing and each copy shall be open to the inspection of any creditor, or of any person interested]

183. (1) Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting ^{Exercise and control of liquidator's powers} [or by the committee of inspection and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection]

(2) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution may direct or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be

(3) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up

(4) Subject to the provisions of this Act the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just in the circumstances

Ordinary powers of Court

184 (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities ^{Settlement of list of contributories and application of assets}

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or hable for the debts of others

185. The Court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, property ^{Power to require delivery of}

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 100

(Part V.—Winding up.)

surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *primâ facie* entitled.

Power to
order pay-
ment of
debts by
contributory.

186. (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance:

Provided that, in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of
Court to
make calls.

187. (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to
order pay-
ment into
bank.

188. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into ^{1*} * * the account of the official liquidator ²[in any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934] instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of
account with
Court.

189. All moneys, bills, hundis, notes and other securities paid and delivered into ³[the Bank where the liquidator of the Company may have his

¹ The words "the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, or any branch thereof, respectively, to" rep. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 101.

² Ins. by s. 101, *ibid.*

³ Subs. by s. 102, *ibid.*, for "the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof, respectively".

(Part V—Winding up)

account] in the event of a company being wound up by the Court shall be subject in all respects to the orders of the Court

190. (1) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due

Order on contributory conclusive evidence

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever

191 The Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved

Power to exclude creditors not proving in time

192. The Courts shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto

Adjustment of rights of contributories

193 The Court may in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just

Power to order costs

194. (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly

Dissolution of company.

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the registrar, who shall make in his books a minute of the dissolution of the company

(3) If the official liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default

Extraordinary Powers of Court

195. (1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company

Power to summon persons suspected of having property of company

(2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them

(3) The Court may require him to produce any documents in his custody or power relating to the company, but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed,

(Part V.—Winding up.)

not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

Power to
order public
examination
of promoters,
directors, etc.

196. (1) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company shall attend before the Court on a day appointed by the Court for that purpose, and be publicly-examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

(Part V —Winding up)

197. The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order

Power to
arrest abscon-
ding contri-
butory

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any call or other sums

Saving of
other sums

Enforcement of and Appeal from Orders

199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced

Power to
enforce
orders

200. Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in British India other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same

Order made
in any Court
to be enforced
by other
Courts

201. Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made, and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same

Mode of
dealing with
orders to be
enforced by
other Courts

202. Re hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction

Appeals from
orders

Voluntary winding up

203. A company may be wound up voluntarily—

- (1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily,

Circumstances
in which
company may
be wound up
voluntarily

(Part V.—Winding up.)

- (2) if the company resolves by special resolution that the company be wound up voluntarily ;
- (3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up ;
- ¹[and the expression 'resolution for voluntarily winding up' when used hereafter in this Part means a resolution passed under clause (1), clause (2) or clause (3) of this section.]

Commence-
ment of
voluntary
winding up.

204. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution ²[for voluntarily winding up].

Effect of
voluntary
winding up
on status of
company.

205. When a company is wound up voluntarily, the company shall, from the commencement of the winding up cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of
resolution to
wind up
voluntarily.

206. (1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the ³[Official Gazette], and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

Declaration
of solvency.

⁴[207. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, to make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up.

(2) Such declaration shall be supported by a report of the company's auditors on the company's affairs, and shall have no effect for the purposes

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 103.

² Subs. by s. 104, *ibid.*, for "authorising the winding up".

³ Subs. by the A. O. for "local official Gazette".

⁴ Ss. 207 to 218 were subs. for the original ss. 207 to 219 by Act 22 of 1936, s. 105.

(Part V —Winding up)

of this Act unless it is delivered to the registrar for registration before the date mentioned in sub section (1) of this section

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as 'a members' voluntary winding up' and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as 'a creditors' voluntary winding up'

Members' voluntary winding up

¹ 208. The provisions contained in sections 203A to 208E, both inclusive, shall apply in relation to a members' voluntary winding up

Provisions applicable to a members' voluntary winding up

¹ 203A. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them

Power of company to appoint and fix remuneration of liquidators

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof

¹ 203B. (1) If a vacancy occurs by death resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors fill the vacancy

Power to fill vacancy in office of liquidator.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one by the continuing liquidators

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court

¹ 203C. (1) Where a company is proposed to be or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company"), the liquidator of the first-mentioned company (in the section called "the transferor company") may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

Power of liquidator to accept shares, etc., as consideration for sale of property of company.

¹ See footnote to s. 207, *supra*.

(Part V.—Winding up.)

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

(6) The provisions of the Indian Arbitration Act, 1899, other than those IX o restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

¹ **208D.** (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

¹ **208E.** (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for publication of a notice under that sub-section.

(3) Within one week after the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding

Duty of liquidator to call general meeting at end of each year.

Final meeting and dissolution.

¹ See footnote to s. 207, *supra*.

(Part V—Winding up)

of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

Provided that, if a quorum is not present at the meeting the liquidator shall, in lieu of the said return, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this sub section as to the making of the return shall be deemed to have been complied with

(4) The registrar on receiving the account and either of the returns mentioned in sub section (3) shall forthwith register them and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within twenty one days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

Creditors' voluntary winding up

¹ 209. The provisions contained in sections 209A to 209H, both inclusive, shall apply in relation to a creditors voluntary winding up

Provisions
applicable to
a creditors
voluntary
winding up

¹ 209A. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company

Meeting of
creditors

(2) The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in sub section (1) of section 206 for the publication of a notice under that sub section

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid, and

¹ See footnote to s 207 *supra*

(Part V.—Winding up.)

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors, held in pursuance of sub-section (1) of this section, shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with sub-sections (1) and (2);

(b) by the directors of the company in complying with sub-section (3);

(c) by any director of the company in complying with sub-section (4);

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one thousand rupees and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment
of liquidator.

¹ 209B. The creditors and the company at their respective meetings mentioned in section 209A may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any nominated by the company shall be liquidator :

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment
of committee
of inspection.

¹ 209C. The creditors at the meeting to be held in pursuance of section 209A or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified

¹ See footnote to s. 207, *supra*.

(Part V—Winding up)

to act as members of the committee and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution

¹209D. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the Court

Fixing of liquidators' remuneration and cesses of directors' powers

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof

¹209E. If a vacancy occurs, by death resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of, the Court, the creditors may fill the vacancy

Power to fill vacancy in office of liquidator

¹209F. The provisions of section 208C shall apply in the case of a creditors' voluntary winding up as in the case of a members voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court of the committee of inspection

Application of section 208C to a creditors voluntary winding up

¹209G (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up and of each succeeding year or as soon thereafter as may be convenient and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding up

Duty of liquidator to call meetings of company and of creditors at end of each year

(2) If the liquidator fails to comply with this section he shall be liable to a fine not exceeding one hundred rupees

¹209H (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof

Final meeting and dissolution

(2) Each such meeting shall be called by advertisement specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in sub section (1) of section 206 for the publication of a notice under that sub section

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is

¹ See footnote to s 207, *supra*

(Part V.—Winding up.)

not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum (which for the purposes of this section shall be two persons) is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (3) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within ten days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Members' or creditors' voluntary winding up.

¹ 210. The provisions contained in sections 211 to 218, both inclusive, shall apply to every voluntary winding up whether a members' or a creditors' winding up.

¹ 211. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

¹ 212. (1) The liquidator may—

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by clauses (d), (e), (f) and (h) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this clause shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers ;

¹ See footnote to s. 207, *supra*.

Provisions
applicable to
every
voluntary
winding up.

Distribution
of property
of company.

Powers and
duties of
liquidator in
voluntary
winding up.

(Part V —Winding up)

(b) without the sanction referred to in clause (a), exercise any of the other powers by this Act given to the liquidator in a winding up by the Court ,

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ,

(d) exercise the power of the Court of making calls ,

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two

¹ 213 (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator

Power of Court to appoint and remove liquidator in voluntary winding up

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator

¹ 214. (1) The liquidator shall, within twenty one days after his appointment, deliver to the registrar for registration a notice of his appointment in the form prescribed

Notice by liquidator of his appointment

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

¹ 215. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors

Arrangement when binding on creditors

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement

¹ 216. (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court

Power to apply to Court to have questions determined of powers exercised

¹ See footnote to s 207, *supra*

(Part V.—Winding up.)

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

Such application shall be made—

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(b) if the attachment, distress or execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.

(3) The Court, if satisfied that the determination of the question or the required exercise of power of the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

¹ 217. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

¹ 218. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.]

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to supervision of Court.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have

¹ See footnote to s. 207, *supra*.

Cost of
voluntary
winding up.

Saving for
rights of
creditors and
contribu-
tories.

Power of
Court to
adopt pro-
ceedings of
voluntary
winding up.

Power to
order wind-
ing up sub-
ject to
supervision.

Effect of
petition for
winding up
subject to
supervision.

Court may
have regard
to wishes of
creditors and

(Part V—Winding up)

regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence contributories

224. (1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator Power for Court to appoint or remove liquidators.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation

225. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily Effect of supervision order

(2) Except as provided in sub section (1), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court

226 Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them either provisionally or permanently and either with or without the addition of any other person, to be official liquidator in the winding up by the Court Appointment in certain cases of voluntary liquidators to office of official liquidators

Supplemental Provisions

227. (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void Avoidance of transfers, etc., after commencement of winding up

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void

(Part V.—Winding up.)

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

Such application shall be made—

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(b) if the attachment, distress or execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.

(3) The Court, if satisfied that the determination of the question or the required exercise of power of the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

Cost of
voluntary
winding up.

¹ 217. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

Saving for
rights of
creditors and
contribu-
tories.

¹ 218. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.]

Power of
Court to
adopt pro-
ceedings of
voluntary
winding up.

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to supervision of Court.

Power to
order wind-
ing up sub-
ject to
supervision.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Effect of
petition for
winding up
subject to
supervision.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

Court may
have regard
to wishes of
creditors and

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have

¹ See footnote to s. 207, *supra*.

(Part V—Winding up)

regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence

224. (1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation

225. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily

(2) Except as provided in sub section (1), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court

226 Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court

Supplemental Provisions

227. (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void

(Part V.—Winding up.)

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

Such application shall be made—

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(b) if the attachment, distress or execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.

(3) The Court, if satisfied that the determination of the question or the required exercise of power of the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

¹ 217. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

¹ 218. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.]

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to supervision of Court.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have

Cost of
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(Part V—Winding up)

regard to the wishes of the creditors or contributories as proved to it by any contributories sufficient evidence

224. (1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator Power for Court to appoint or remove liquidators.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation

225. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily Effect of supervision order

(2) Except as provided in sub section (1), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court

226 Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court Appointment in certain cases of voluntary liquidators to office of official liquidators.

Supplemental Provisions

227. (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void Avoidance of transfers, etc., after commencement of winding up

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall unless the Court otherwise orders, be void

(Part V.—Winding up.)

Debts of all descriptions to be proved.

228. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

Application of insolvency rules in winding up of insolvent companies.

229. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential payments.

230. (1) In a winding up there shall be paid in priority to all other debts—

- (a) all revenue, taxes, cesses and rates, whether payable to the Crown or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date;
- (b) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant;¹*
- (c) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date;
- ²[(d) compensation payable under the Workmen's Compensation Act, 1923, in respect of the death or disablement of any officer VIII of or employee of the company;
- (e) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; and
- (f) the expenses of any investigation held in pursuance of clause (iv) of section 138 of this Act].

(2) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and

¹ The word "and" rep. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 106.

² Ins., *ibid.*

(Part V —Winding up)

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made

(5) The date hereinbefore in this section referred to is—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order and

(b) in any other case, the date of the commencement of the winding up

¹ [230A (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants of shares or stock in companies of unprofitable contracts or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property. Disclaimer of property.]

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights interests, and liabilities of the company, and the

¹ Ins by the Indian Companies (Amendment) Act 1935 (22 of 1935) s 107

(Part V.—Winding up.)

property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a lease-hold nature, the Court shall not make a vesting order in favour of any person claiming under the company whether as under-lessee or as mortgagee except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

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- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ,

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person hable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up]

231. (1) Any transfer, delivery of goods, payment, execution or other ^{Fraudulent preference.} act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void

232. (1) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution pnt in force without leave of the Court against the estate or effects ^{Avoidance of certain attachments, executions, etc} [or any sale held without leave of the Court of any of the properties] of the company after the commencement of the winding up shall be void

(2) Nothing in this section applies to proceedings by ²[the Crown]

233. Where a company is being wound up a floating charge on the under taking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum ^{Effect of floating charge}

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 108

² Subs. by the A. O. for the Govt

(Part V.—Winding up.)

General
scheme of
liquidation
may be sanc-
tioned.

234. (1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them :

- (i) pay any classes of creditors in full ;
- (ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable ;
- (iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

Power of
Court to
assess dama-
ges against
delinquent
directors, etc.

235. (1) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory ¹[made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer,] examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

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¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 109.

² Sub-section (3) *rep.*, *ibid.*

(Part V —Winding up)

236. If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine

Penalty for falsification of books

¹[237. (1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion direct the liquidator either himself to prosecute the offender or to refer the matter to the registrar

Prosecution of delinquent directors

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question as he may require

(3) Where any report is made under sub section (2) to the registrar, he may, if he thinks fit refer the matter to the "[Central Government]" for further inquiry, and the "[Central Government]" shall thereupon investigate the matter and may if they think it expedient apply to the Court for an order conferring on any person designated by the "[Central Government]" for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court

(4) If on any report to the registrar under sub section (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the registrar, the Court may on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report

¹ Subs. by the Indian Companies (Amendment) Act 1936 (22 of 1936) s. 110, for the original section

² Subs. by the A. O. for L. G.

(Part V.—Winding up.)

being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall place the papers before the Advocate General or the public prosecutor and if advised to do so institute proceedings, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give:

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the registrar and of being heard thereon.

For the purposes of this sub-section, the expression 'agent' in relation to a company shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by sub-section (6), the Court may, on the application of the registrar, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.]

238. If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

¹[**238A.** (1) If any person, being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof,

¹ Ins. by the Indian Companies (Amendment) Act. 1936 (22 of 1936), s. 111.

(Part V —Winding up)

except such part as has been disposed of in the ordinary way of the business of the company, or

- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up, or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company, or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards, or
- (f) makes any material omission in any statement relating to the affairs of the company, or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof, or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company, or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or affairs of the company, or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company, or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company, or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or

(Part V.—Winding up.)

- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company ; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up ;

he shall be punishable, in the case of the offences mentioned respectively in clauses (m), (n) and (o) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years :

Provided that it shall be a good defence to a charge under any of clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of clauses (a), (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years.]

239. (1) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

Meetings to ascertain wishes of creditors or contributories.

(Part V —Winding up)

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles

240. Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded Documents of company to be evidence

241. After an order for a winding up by or subject to the supervision of the Court the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise Inspection of documents

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say) — Disposal of documents of company

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs,

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein

243 (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved Power of Court to declare dissolution of company void

(2) It shall be the duty of the person on whose application the order was made within twenty one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

244. (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, ¹[once in each year and at intervals of not more than twelve months], until the winding up is concluded, ²file in Court or with the registrar, as the case may be, a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Information as to pending liquidations

¹ Subs by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s 112, for "at such intervals as may be prescribed"

² Subs by s 112, *ibid*, for 'file with the registrar

(Part V.—Winding up.)

- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for : or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company ; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up ;

He shall be punishable, in the case of the offences mentioned respectively in clauses (m), (n) and (o) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years :

Provided that it shall be a good defence to a charge under any of clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of clauses (a), (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years.]

Meetings to ascertain wishes of creditors or contributories.

239. (1) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(Part V—Winding up)

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles

240. Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded Documents of company to be evidence

241. After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise Inspection of documents

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say) — Disposal of documents of company

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs,

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein

243. (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved Power of Court to declare dissolution of company void.

(2) It shall be the duty of the person on whose application the order was made within twenty one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

244. (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, ¹[once in each year and at intervals of not more than twelve months], until the winding up is concluded, ²[file in Court or with the registrar, as the case may be] a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Information as to pending liquidations

¹ Subs by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s 112, for "at such intervals as may be prescribed"

² Subs by s 112, *ibid*, for "file with the registrar"

(Part V.—Winding up.)

- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

He shall be punishable, in the case of the offences mentioned respectively in clauses (m), (n) and (o) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years:

Provided that it shall be a good defence to a charge under any of clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of clauses (a), (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years.]

239. (1) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

Meetings to ascertain wishes of creditors or contributories.

(Part V—Winding up)

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles

240. Where any company is being wound up, all documents of the company and of the liquidators shall as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded Documents of company to be evidence

241. After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly but not further or otherwise Inspection of documents

242 (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say) — Disposal of documents of company

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs,

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs

(2) After three years from the dissolution of the company no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein

243. (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved Power of Court to declare dissolution of company void

(2) It shall be the duty of the person on whose application the order was made, within twenty one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

244 (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, ¹[once in each year and at intervals of not more than twelve months], until the winding up is concluded, ²[file in Court or with the registrar, as the case may be,] a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Information as to pending liquidations

¹ Subs by the Indian Companies (Amendment) Act 1936 (22 of 1936), s 112, for "at such intervals as may be prescribed"

² Subs by s 112, *ibid*, for "file with the registrar"

(Part V.—Winding up.)

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall be punishable XLV accordingly on the application of the liquidator.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

¹[(4) When the statement is filed in Court a copy shall simultaneously be filed with the registrar and shall be kept by him along with the other records of the company.]

Payments of
liquidator
into bank.

²[244A. (1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 :

II of 1

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him as liquidator into such account.]

Court or
person before
whom affi-
davit may
be sworn.

245. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in British India, or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by ³[the Central Government or the Crown Representative], or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice-Consuls.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 112.

² Ins. by s. 113, *ibid.*

³ Subs. by the A. O. for "the G. G. in C."

(Part V—Winding up)

(2) All Courts, Judges, Justices, Commissioners, and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature of any Court, Judge, person, Consul or Vice Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part

Rules

246. (1) The High Court may, from time to time, make rules consistent with this Act and with the Code of Civil Procedure 1908, concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, [and for voluntary winding up (both the holding of meetings of creditors and members in connection with proceedings under section 153 of this Act,) and for giving effect to the provisions hereof of the shares of a company [and generally for all applications to be made to the Court under the provisions of this Act] and shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed]

(2) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the matters following, to be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories,
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets,
- (c) requiring delivery of property or documents to the liquidator,
- (d) making calls, within which debts and claims must be proved.
- (e) fixing a time within which the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call of the Court

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call of the Court without the special leave

Removal of defunct Companies from Register

247. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company a notice whether the company is carrying on business or in operation. If the Registrar may strike off the name of a company from the register

¹ Ins by the Indian Companies (Amendment) Act, 1938 (22 of 1938), s. 114

² Ins by the Repealing and Amending Act, 1915 (11 of 1915), s. 2 and Sch. I

(Part V.—Winding up.)

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the ¹[Official Gazette] with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the ¹[Official Gazette], and send to the company by post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the ¹[Official Gazette] and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the ¹[Official Gazette], and, on the publication in the ¹[Official Gazette] of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care

¹ Subs. by the A. O. for "local official Gazette".

(Part V—Winding up Part VI—Registration Office and Fees)

of some director manager or other officer of the company or if there is no director manager or other officer of the company, whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum

PART VI

REGISTRATION OFFICE AND FEES

248 (1) For the purposes of the registration of companies under this Act there shall be offices at such places as the ¹[Central Government] thinks fit, and no company shall be registered except at an office within the province in which by the memorandum the registered office of the company is declared to be established Registration offices

(2) The ¹[Central Government] may appoint such registrars and assistant registrars as it thinks necessary for the registration of companies under this Act and may make regulations with respect to their duties

(3) The salaries of the persons appointed under this section shall be fixed by the ¹[Central Government]

(4) The ¹[Central Government] may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies

(5) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the ¹[Central Government] not exceeding one rupee for each inspection and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the registrar on payment for the certificate, certified copy or extract of such fees as the ¹[Central Government] may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied

(6) Whenever any act is by this Act directed to be done to or by the registrar it shall until the ¹[Central Government] otherwise directs be done to or by the existing registrar of joint stock companies or in his absence to or by such person as the ¹[Central Government] may for the time being authorise, but in the event of the ¹[Central Government] altering the constitution of the existing registry offices or any of them any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the ¹[Central Government] may appoint

249. (1) There shall be paid to the registrar in respect of the several matters Fees mentioned in Table B in the First Schedule the several fees therein specified, or such smaller fees as the ²[Central Government] may direct

¹ Subs by the A O for L G

² Subs by the A O for G G in C

(Part VI.—Registration Office and Fees. Part VII.—Application of Act to Companies formed and registered under former Companies Acts.)

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the Crown.

Enforcing
submission of
returns and
documents to
registrar.

¹[249A. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.]

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

Application
of Act to
companies
formed under
former
Companies
Acts.

250. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and, in the case of a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that—

- (1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860, or either of them, or under the Indian Companies Act, X of 1866, or the Indian Companies Act, 1882; VI of 18
- (2) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under Act No. XIX of 1857 and Act No. VII of 1860, or either of them, or under the Indian Companies Act, X of 1866, or the Indian Companies Act, 1882, as the case may be. VI of 18

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 115.

(Part VII—Application of Act to Companies formed and registered under former Companies Acts Part VIII—Companies authorised to register under this Act)

251. This Act shall apply to every company registered but not formed under Act No XIX of 1857 and Act No VII of 1860 or either of them, or under the Indian Companies Act 1866, or the Indian Companies Act, 1882, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act

Application of Act to companies registered but not formed under former Companies Acts

Provided that reference, express or implied to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them

252. A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct

Mode of transferring

PART VIII

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

253. (1) With the exceptions and subject to the provisions mentioned and contained in this section,—

Companies capable of being registered

- (i) any company consisting of seven or more members which was in existence on the first day of May, eighteen hundred and eighty two, including any company registered under Act No XIX of 1857 and Act No VII of 1860 or either of them, and
- (ii) any company formed after the date aforesaid whether before or after the commencement of this Act, in pursuance of any Act of Parliament or ¹[Indian law] other than this Act, or of Letters Patent, or being otherwise duly constituted according to law, and consisting of seven or more members,

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee, and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up

(2) Provided as follows

- (a) a company having the liability of its members limited by Act of Parliament or ¹[Indian law] or by Letters Patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section,
- (b) a company having the liability of its members limited by Act of Parliament or ¹[Indian law] or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee,

¹ Subs by the A O for 'Act of the G G in C'

(Part VIII.—Companies authorised to register under this Act.)

- (c) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares ;
- (d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;
- (e) where a company not having the liability of its members limited by Act of Parliament or ¹[Indian law] or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;
- (f) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the articles.

(4) A company registered under the Indian Companies Act, 1882, shall VI of not be registered in pursuance of this section.

Definition of
" joint-stock
company ".

254. For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons ; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements
for registra-
tion by joint-
stock com-
panies.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the registrar the following documents (that is to say) :—

- (I) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the com-

¹ Subs. by the A. O. for " Act of the G. G. in C."

(Part VIII—Companies authorised to register under this Act)

pany, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number,

- (2) a copy of any Act of Parliament, ¹[Indian law], Royal Charter, Letters Patent, deed of settlement, contract of co partnership or other instrument constituting or regulating the company, and
- (3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) —
 - (a) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists,
 - (b) the number of shares taken and the amount paid on each share,
 - (c) the name of the company, with the addition of the word "Limited" as the last word thereof, and
 - (d) in the case of a company intended to be registered as a company limited by guarantee the resolution declaring the amount of the guarantee

256. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the registrar—

Requirements for registration by other than joint stock companies

- (1) a list showing the names, addresses and occupations of the directors of the company, and
- (2) a copy of any Act of Parliament, ¹[Indian law], Letters Patent, deed of settlement, contract of co partnership or other instrument constituting or regulating the company, and
- (3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee

257. The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company

Authentication of statement of existing companies

258. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as heretofore defined

Registrar may require evidence as to nature of company

259 (1) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address

On registration of banking company with limited liability, notice to be given to customers

¹Subs by the A O for "Act of the G G in C"

(Part VIII.—Companies authorised to register under this Act.)

- (c) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares ;
- (d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;
- (e) where a company not having the liability of its members limited by Act of Parliament or ¹[Indian law] or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;
- (f) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the articles.

(4) A company registered under the Indian Companies Act, 1882, shall VI of not be registered in pursuance of this section.

Definition of
" joint-stock
company ".

254. For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons ; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements
for registra-
tion by joint-
stock com-
panies.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the registrar the following documents (that is to say) :—

- (1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the com-

¹ Subs. by the A. O. for " Act of the G. G. in C."

(Part VIII—Companies authorised to register under this Act)

pany, with the addition of the shares or stock held by them respectively, *distinguishing, in cases where the shares are numbered, each share by its number,*

- (2) a copy of any Act of Parliament, ¹[Indian law], Royal Charter, Letters Patent, deed of settlement, contract of co partnery or other instrument constituting or regulating the company, and
- (3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) —
 - (a) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists,
 - (b) the number of shares taken and the amount paid on each share,
 - (c) the name of the company, with the addition of the word ' Limited' as the last word thereof, and
 - (d) in the case of a company intended to be registered as a company limited by guarantee the resolution declaring the amount of the guarantee

256. Before the registration in pursuance of this Part of any company not being a joint stock company, there shall be delivered to the registrar—

- (1) a list showing the names addresses and occupations of the directors of the company, and
- (2) a copy of any Act of Parliament ¹[Indian law], Letters Patent deed of settlement, contract of co partnery or other instrument constituting or regulating the company, and
- (3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee

Requirements for registration by other than joint stock companies

257. The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company

Authentication of statement of existing companies

258 The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined

Registrar may require evidence as to nature of company

259. (1) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address

On registration of banking company with limited liability, notice to be given to customers

(Part VIII.—Companies authorised to register under this Act.)

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption
of certain
companies
from pay-
ment of fees.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of Parliament or ¹[Indian law] or by Letters Patent.

Addition of
"Limited"
to name.

261. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

Certificate of
registration
of existing
companies.

262. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal.

Vesting of
property on
registration.

263. All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving of
existing
liabilities.

264. The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation
of existing
suits.

265. All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Effect of
registration
under Act.

266. When a company is registered in pursuance of this Part—

(i) all provisions contained in any Act of Parliament, ¹[Indian law], deed of settlement, contract of co-partnery, Letters Patent;

¹ Subs. by the A. O. for "Act of the G. G. in C."

(Part VIII—Companies authorised to register under this Act)

or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidence as if so much thereof as would if the company had been formed under this Act have been required to be inserted in the memorandum, were contained in a registered memorandum and the residue thereof were contained in registered articles

- (u) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say) —
- (a) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution,
 - (b) the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered,
 - (c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or ¹[Indian law] relating to the company,
 - (d) subject to the provisions of this section, the company shall not have power, without the sanction of the ²[Central Government], to alter any provision contained in any Letters Patent relating to the company,
 - (e) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company,
 - (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the cost and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid, and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability

¹ Subs by the A O for "Act of the G G in C"

² Subs by the A O for "G G in C"

(Part VIII.—Companies authorised to register under this Act.)

as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply;

(iii) the provisions of this Act with respect to—

(a) the registration of an unlimited company as limited;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, ¹[Indian law], Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company;

(iv) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act;

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of Parliament, ¹[Indian law], deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

267. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications :—

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum of articles; and

¹ Subs. by the A. O. for "Act of the G. G. in C."

(Part VIII — Companies authorised to register under this Act Part IX —
Winding up of Unregistered Companies)

(b) on the registration of the alteration being certified by the registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act

(4) In this section the expression "deed of settlement" includes any contract of co partnership or other instrument constituting or regulating the company, not being an Act of Parliament, an ¹[Indian law], a Royal Charter or Letters Patent

268. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall in the case of a company registered in pursuance of this Part where the application to stay or restrain is by a creditor extend to suits and legal proceedings against any contributory of the company Power of Court to stay or restrain proceedings

269. Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company except by leave of the Court, and subject to such terms as the Court may impose Suits stayed on winding up order

PART IX

WINDING UP OF UNREGISTERED COMPANIES

270. For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament or by an ¹[Indian law], nor a company registered under the Indian Companies Act, 1866, or under any Act repealed thereby, or under the Indian Companies Act, 1882, or under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members Meaning of "unregistered company"

271. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions — Winding up of unregistered companies

(1) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the province where its principal place of business is situate or, if it has a principal place of

¹ Subs. by the A. O. for "Act of the G. G. in C."

(Part IX.—Winding up of Unregistered Companies.)

business situate in more than one province, then in each province where it has a principal place of business ; and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company ;

- (ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision ;
- (iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say) :—
 - (a) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs ;
 - (b) if the company is unable to pay its debts ;
 - (c) if the Court is of opinion that it is just and equitable that the company should be wound up ;
- (iv) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;
 - (b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;

(Part IX—Winding up of Unregistered Companies)

- (c) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied, and
- (d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

[(3) Where a company incorporated outside British India which has been carrying on business in British India ceases to carry on business in British India it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.]

272 (1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding up the company and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories and to the assignees of insolvent contributories shall apply.

273 The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor extend to suits and legal proceedings against any contributory of the company.

274 Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

(Part IX.—Winding up of Unregistered Companies. Part X.—Companies established outside British India.)

Directions
as to pro-
perty in
certain cases.

275. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly: and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions
of this Part
cumulative.

276. The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART X.

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA.

Requirements
as to com-
panies estab-
lished outside
British
India.

277. (1) Every company incorporated outside British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India, shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and managers (if any) of the company;
- (d) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company;

(Part X—Companies established outside British India)

and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the registrar a notice of the alteration

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed

(3) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

- (a) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance sheet,—a copy of that balance sheet ¹[and if the balance sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements as shall furnish such information], or
- (ii) in a case where no such provision is made by the law, for the time being in force of the country in which the company is incorporated—such a statement in the form of a balance sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act

2* * * * * * *

(4) Every company to which this section applies and which uses the word "Limited" as part of its name shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in British India, state the country in which the company is incorporated, and
- (b) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place, and
- (c) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill heads and letter paper, and in all notices, advertisements and other official publications of the company.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 117

² The proviso to sub section (3) rep. by s. 117, *ibid*

(Part X.—Companies established outside British India.)

¹[(5) Every company to which this section applies shall if the liability of the members of the company is limited cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper notices, advertisements and other official publications of the company in British India, and to be affixed on every place where it carries on business.]

¹[(6)] If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

¹[(7)] For the purposes of this section—

- (a) the expression “certified” means certified in the prescribed manner to be a true copy or a correct translation;
- (b) the expression “place of business” includes a share transfer or share registration office;
- (c) the expression “director” includes any person occupying the position of director, by whatever name called; and
- (d) the expression “prospectus” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

¹[(8)] There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

Restriction on
sale and offer
for sale of
share.

²[277A. (1) It shall not be lawful for any person—

- (a) to issue, circulate or distribute in British India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside British India whether the company has or has not established, or when formed will or will not establish, a place of business in British India, unless—
 - (i) before the issue, circulation or distribution of the prospectus in British India a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar;
 - (ii) the prospectus states on the face of it that the copy has been so delivered;
 - (iii) the prospectus is dated; and
 - (iv) the prospectus otherwise complies with this Part; or

¹ Sub-section (5) was ins. and the original sub-sections (5), (6) and (7) were re-numbered as sub-sections (6), (7) and (8) respectively, by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 117.

² Ss. 277A to 277E were ins. by s. 118, *ibid.*

(Part X—Companies established outside British India)

- (b) to issue to any person in British India a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently

(3) Where any document by which any shares in or debentures of a company incorporated outside British India are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 98A to be a prospectus issued by the company, that document shall be deemed to be for the purposes of this section, a prospectus issued by the company

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section

(5) Any person who is knowingly responsible for the issue or circulation or distribution of any prospectus or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five thousand rupees

(6) In this section and in section 277B, the expressions 'prospectus', 'shares' and 'debentures' have the same meanings as when used in relation to a company incorporated under this Act

¹277B. (1) In order to comply with this Part a prospectus, in addition Requirements to complying with the provisions of sub clauses (i) and (ii) of clause (a) ^{as to prospectus} of sub section (1) of section 277A, must—

(a) contain particulars with respect to the following matters —

- (i) the objects of the company,
- (ii) the instrument constituting or defining the constitution of the company,
- (iii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected.

(Part X.—Companies established outside British India.)

- (iv) an address in British India where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected ;
- (v) the date on which and the country in which the company was incorporated ;
- (vi) whether the company has established a place of business in British India and, if so, the address of its principal office in British India :

Provided that the provisions of sub-clauses (i), (ii) and (iii) of this clause shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business ;

- (b) subject to the provisions of this section, state the matters specified in sub-section (1A) of section 93 and set out the reports specified in that section :

Provided that—

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and
- (ii) in section 93 of this Act a reference to the articles of the company shall be deemed to be a reference to the constitution of the company.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof ; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :

(Part X—Companies established outside British India Part XI—Banking Companies)

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in clause (n) of sub section (1) of section 93, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section

^{1277C} (1) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside India for subscription or purchase to the public or any member of the public *Restriction on canvassing for sale of shares*

(2) In this sub section the expression 'house' shall not include an office used for business purposes

(3) Any person acting in contravention of this section shall be liable to a fine not exceeding rupees one hundred

^{1277D} The provisions of sections 109 to 117 both inclusive and 120 to 125, both inclusive shall extend to charges on properties in British India which are created and to charges on property in British India which is acquired after the "commencement of the Indian Companies (Amendment) Act, 1936 by a company incorporated outside British India which has an established place of business in British India *Registration of charges*

^{1277E} The provisions of sections 118 and 119 shall *mutatis mutandis* apply to the case of all companies incorporated outside British India but having an established place of business in British India and the provisions of section 130 shall apply to such companies to the extent of requiring them to keep at their principal place of business in British India the books of account required by that section with respect to money received and expended, sales and purchases made and assets and liabilities in relation to its business in British India *Notice of appointment of receiver*

[PART XI]

BANKING COMPANIES

^{1277F} A 'banking company' means a company which carries on as its principal business the accepting of deposits of money on current account *Definition of banking company*

¹ See footnote 2 on p 380 *supra*

(Part XA.—Banking Companies.)

or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely :—

- (1) the borrowing, raising or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not ; the granting and issuing of letters of credit, travellers cheques and circular notes ; the buying, selling and dealing in bullion and specie ; the buying and selling of foreign exchange including foreign bank notes ; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds ; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others ; the negotiating of loans and advances ; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise ; the collecting and transmitting of money and securities ;
- (2) acting as agents for Governments or local authorities or for any other person or persons ; the carrying on of agency business of any description other than the business of a managing agent including the power to act as attorneys and to give discharges and receipts ;
- (3) contracting for public and private loans and negotiating and issuing the same ;
- (4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ;
- (5) carrying on and transacting every kind of guarantee and indemnity business ;
- (6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;
- (7) acquisition by purchase, lease, exchange, hire or otherwise of any property immoveable or moveable and any rights or privileges which the company may think necessary or convenient to

(Part XA—Banking Companies)

acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability,

- (8) managing, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims,
- (9) acquiring and holding and generally dealing with any property and any right, title or interest in any property moveable or immoveable which may form part of the security for any loans or advance or which may be connected with any such security,
- (10) undertaking and executing trusts,
- (11) undertaking the administration of estates as executor, trustee or otherwise,
- (12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company,
- (13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex employees of the company or the dependents or connections of such persons, granting pensions and allowances and making payments towards insurance, subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object,
- (14) the acquisition construction maintenance and alteration of any building or works necessary or convenient for the purposes of the company,
- (15) selling improving, managing developing, exchanging, leasing, mortgaging disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company,
- (16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section
- (17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company]

¹[277G. (1) No company formed after the ²commencement of the Indian Companies (Amendment) Act, 1936, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word 'bank' 'banker' or 'banking' shall be registered under this Act, unless the memorandum limits the objects of the company to the carrying on of the business of receiving deposits of money

Limitation of activities of banking company.

¹ See footnote 3 on page 383 *supra*

² The Act came into force on the 15th January, 1937

(Part XA.—Banking Companies.)

on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 277F.

(2) No banking company whether incorporated in or outside British India shall after the expiry of two years from the ¹commencement of the said Act carry on any form of business other than those specified in section 277F :

Provided that the ²[Central Government] may, by notification in the ³[Official Gazette] specify in addition to the businesses set forth in clauses (1) to (17) of section 277F other forms of business which it may be lawful under this section for a banking company to engage in.]

Banking company not to employ managing agent.

⁴[277H. No banking company shall after the expiry of two years from the ¹commencement of the Indian Companies (Amendment) Act, 1936, employ XXII or be managed by a managing agent other than a banking company for the ¹⁹ management of the company.]

Restriction on commencement of business by banking company.

⁴[277I. Notwithstanding anything contained in section 103, no banking company incorporated under this Act after the ¹commencement of the Indian Companies (Amendment) Act, 1936, shall commence business, unless shares XXII have been allotted to an amount sufficient to yield a sum of at least fifty ¹⁹³⁶ thousand rupees as working capital and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid up capital has been filed with the registrar.]

Prohibition of charge on unpaid capital.

⁴[277J. No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.]

Reserve fund.

⁴[277K. (1) Every banking company shall, after the ¹commencement of the Indian Companies (Amendment) Act, 1936, maintain a reserve fund. XXII ¹⁹³⁶

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid up capital.

(3) A banking company shall invest the amount standing to credit of its reserve fund in Government securities or in securities mentioned or referred to in section 20 of the Indian Trusts Act, 1882, or keep deposited in a special ^{II} of ¹⁸ account to be opened by the company for the purpose in a scheduled bank as defined in clause (e) of section (2) of the Reserve Bank of India Act, 1934 : ^{II} of ¹⁸

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the ¹commencement of the Indian Companies XXII (Amendment) Act, 1936, till after the expiry of two years from the commence- ¹⁹³⁶ ment of the said Act.]

¹ The Act came into force on the 15th January, 1937.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "Gazette of India".

⁴ See footnote 3 on page 383, *supra*.

(Part XA —Banking Companies)

[277L. (1) Every banking company shall maintain by way of cash reserve Cash reserve. in cash a sum equivalent to at least one and a half per cent of the time liabilities and five per cent of the demand liabilities of such company and shall file with the registrar before the tenth day of every month a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day

(2) For the purposes of sub section (1) 'demand liabilities' means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities

334 (3) Nothing in this section or in section 277K shall apply to a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934

(4) If default is made in complying with the requirements of section 277G, section 277H, section 277J, section 277K or section 277M or with the requirements of this section as to the maintenance of a cash reserve, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues, and if default is made in complying with the requirements of this section as to the filing of the statement referred to in sub section (1), to a fine not exceeding one hundred rupees for every day during which the default continues]

[277M. A banking company shall not form or hold shares, in any subsidiary company except a subsidiary company of its own formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise and such other purposes set forth in section 277F as are incidental to the business of accepting deposits of money on current account or otherwise] Restriction nature of subsidiary companies

[277N. (1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period] Power of Court to stay proceedings

(2) No such application shall be maintainable unless accompanied by a report of the registrar

Provided, however, the Court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report

(3) The registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the company and for such purpose to have the books and documents of the company examined by an accountant holding a certificate issued under section 144]

¹ See footnote 3 on page 333, *supra*

(Part XI.—Supplemental.)

PART XI.

SUPPLEMENTAL.

*Legal proceedings, offences, etc.*Cognizance
of offences.

278. (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

(2) If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1898, Vol every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

Application
of fines.

279. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

Power to
require
limited
company to
give security
for costs.

280. Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of
Court to
grant relief in
certain cases.

¹[281. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 120, for the original section.

(Part XI—Supplemental)

(3) The persons to whom this section applies are the following —

- (a) directors of a company,
- (b) managers and managing agents of a company,
- (c) officers of a company,
- (d) persons employed by a company as auditors, whether they are or are not officers of the company]

282. Whoever in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine

Penalty for false statement

[282A. Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Act, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine not exceeding one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied or in default to suffer imprisonment for a period not exceeding two years

Penalty for wrongful withholding of property.

282B. (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (c) of section 2 of the Reserve Bank of India Act, 1934, and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service

Penalty for misapplication of securities by employers

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the commencement of the Indian Companies (Amendment) Act, 1936, shall be invested, and shall be invested only in securities mentioned or referred to in clauses (a) to (c) of section 20 of the Indian Trusts Act, 1882, and all moneys belonging to such fund at the commencement of the said Act which are not so invested shall be invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys

(3) Notwithstanding anything to the contrary in the rules of any fund to which sub section (2) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion

¹ Ss 282A and 282B were ins by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s 121

² The Act came into force on the 15th January, 1937

(Part XI.—Supplemental.)

of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (2) interest at a rate exceeding the rate of interest yielded by such investment.

(4) An employee shall be entitled on request made in this behalf to the company to see the bank's receipt for any money or security such as is referred to in sub-section (1) and sub-section (2).

(5) Any director, managing agent, manager or other officer of the company who knowingly contravenes or permits or authorises the contravention of the provisions of this section shall be liable on conviction to a fine not exceeding five hundred rupees.]

283. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

284. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Indian Companies Act, 1882, VI of 1882 shall be deemed to remain in full force.

285. Every instrument of transfer or other document made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

286. (1) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

1* * * * *

287. Nothing in this Act shall affect the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act, 1912.

288. In sections 1 and 18 of Act No. XXI of 1860² (for the registration of Literary, Scientific and Charitable Societies), the words "registrar of joint-stock companies" shall be construed to mean the registrar under this Act.

¹ Sub-section (3) rep. by the A. O.

² The Societies Registration Act, 1860.

Penalty for improper use of word "Limited".

Saving of pending proceedings for winding up.

Saving of document.

Former registration offices, registers and registrars, continued.

Savings for Indian Life Assurance Companies Act, 1912, and Provident Insurance Societies Act, 1912.

Construction of "registrar of joint-stock companies" in Act XXI of 1860.

(Part XI—Supplemental The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

289. Save as provided in sections 188 and 189, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay

[289A. The powers conferred by this Act on the Central Government shall, in relation to companies with objects confined to a single Province which are not trading corporations, be powers of the Provincial Government]

290 (1) The enactments mentioned in the Fourth Schedule are hereby repealed to the extent specified in the fourth column thereof

Provided that the repeal shall not affect—

(a) the incorporation of any company registered under any enactment hereby repealed, nor

(b) Table B³ in the Schedule annexed to Act No XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act, nor

(c) Table A⁴ in the First Schedule annexed to the Indian Companies Act, 1882, or any part thereof, so far as the same applies to any company existing at the commencement of this Act

(2) All fees directed, resolutions passed and other things duly done under any enactment hereby repealed, shall be deemed to have been directed, passed or done under this Act

(3) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals

SCHEDULES

THE FIRST SCHEDULE

(See sections 2, 17, 18, 79, 266)

TABLE A

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Preliminary

1. In these regulations, unless the context otherwise requires expressions defined in the Indian Companies Act, 1913, or any statutory modification

(The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.)

thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versâ*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine ¹[and any preference share may with the sanction of a special resolution be issued on the terms that it is or at the option of the company is liable to be redeemed.]

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may ¹[subject to the provisions of section 66A of the Indian Companies Act, 1913] be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Indian Companies Act, 1913, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 122.

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit

8 ¹[Except to the extent allowed by section 51A of the Indian Companies Act, 1913,] no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares

Lien

9 The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon

10 The company may sell, in such manner as the director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share

11 The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale

Calls on shares

12 The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one fourth of the nominal amount of the share, or be payable at less than one month from the last call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of

¹ Ins. by the Indian Companies (Amendment) Act, 1930 (22 of 1930) s. 122

(The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.)

payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A B of _____, in consideration of the sum of rupees _____ paid to me by C D of _____ (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [or shares] numbered in the undertaking called the _____ Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the _____ day of _____

Witness to the signatures of, etc.

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

20 The directors may decline to register any transfer of shares, not being fully paid shares to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

- (a) a fee not exceeding two rupees is paid to the company in respect thereof, and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer

[If the directors refuse to register a transfer of any shares they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal.]

21 The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor or the executors or administrators of the deceased survivor shall be the only persons recognised by the company as having any title to the share.

22 Any person becoming entitled to a share in consequence of the death or insolvency of a member shall upon such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

23 A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to the management of the company.

Forfeiture of Shares

24 If a member fails to pay any call or instalment of a call on him appointed for payment thereof the directors may, at any time, after the

(The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.)

during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

32 The holders of stock may transfer the same, or any part thereof, in the same manner and subject to the same regulations, as and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum but the minimum shall not exceed the nominal amount of the shares from which the stock arose

33 The holders of stock shall, according to the amount of the stock held by them have the same rights privileges and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not if existing in shares have conferred that privilege or advantage

34 Such of the regulations of the company (other than those relating to share warrants), as are applicable to paid up shares shall apply to stock, and the words 'share' and 'share holder' therein shall include "stock" and "stockholder"

Share warrants

35 The company may issue share warrants and accordingly the directors may in their discretion with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require issue under the company's seal a warrant, duly stamped stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys on the shares included in the warrant

36 A share warrant shall entitle the bearer to the shares included in it and the share shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto

37 The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant

38 The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other

(The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.)

privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may, from time to time, make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital.

41. The directors may, with the sanction of ¹[the company in general meeting], increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 122, for "an extraordinary resolution of the company".

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

44 The company may, by ¹[ordinary resolution],—

- (a) consolidate and divide its share capital into shares of larger amount than its existing shares,
- (b) by sub division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section 50 of the Indian Companies Act, 1913,
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person,

2* * * * * * *

³[44A The company may, by special resolution reduce its share capital in any manner and with, and subject to any incident authorised and consent required, by law]

General Meetings

45 The statutory general meeting of the company shall be held within the period required by section 77 of the Indian Companies Act, 1913

46 A general meeting shall be held ⁴[within eighteen months from the date of its incorporation and thereafter once at least in every year] at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors

47 The above mentioned general meetings shall be called ordinary meetings, all other general meetings shall be called extraordinary

48 The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by section 78 of the Indian Companies Act, 1913. If at any time there are not within British India sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors

¹ Subs by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s 122, for 'special resolution'

² Cl (d) rep *ibid*

³ Ins *ibid*

⁴ Subs by s 122 *ibid* for 'once in every year'

(The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.)

Proceedings at General Meeting.

49. ¹[Subject to the provisions of sub-section (2) of section 81 of the Indian Companies Act, 1913, relating to special resolutions], fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under ¹[the Indian Companies Act, 1913, or] the regulations of the company, entitled to receive such notices from the company; but ²[the accidental omission to give notice to or the non-receipt of notice] by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, ³[two members in the case of a private company and five members in the case of any other company] personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 122.

² Subs. by s. 122, *ibid.* for "non-receipt of the notice".

³ Subs. by s. 122, *ibid.* for "three members".

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57 If a poll is duly demanded it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58 In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

60 On a show of hands every member present in person shall have one vote. ¹[On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him]

61 In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62 A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

63 No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s. 122, for "On a poll every member shall have one vote for each share of which he is the holder"

(The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.)

64. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless ¹[he is a member of the company].

66. The instrument appointing a proxy and the power-of-attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

Company, Limited.

“ I of in the district of , being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof.”

Signed this day of .

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913.

Powers and duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company,

¹ Subs. for the original words by the Indian Companies (Amendment) Act, 1936 (22) of 1936), s. 122.

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made

72 The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits or partly in one way and partly in another) as they may think fit, and a director so appointed shall not while holding that office be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined

73 The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (other wise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting

74 The directors shall duly comply with the provisions of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it and to keeping a register of the directors and to sending to the registrar an annual list of members and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein

75 The director shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors,
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors,
- (c) of all resolutions and proceedings at all meetings of the company, and, of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose

(*The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.*)

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated if the director—

- ¹[(a)] fails to obtain within the time specified in sub-section (1) of section 84 of the Indian Companies Act, 1913, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment; or
- (b) is found to be of unsound mind by a Court of competent jurisdiction; or
- (c) is adjudged insolvent; or
- (d) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or
- (e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or
- (f) absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is longer, without leave of absence from the board of directors; or
- (g) accepts a loan from the company; or]
- ²[(h)] is concerned or participates in the profits of any contract with the company; or
- ²[(i)] is punished with imprisonment for a term exceeding six months:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year,

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 122, for the original cls. (a) to (d).

² The original cls. (e) and (f) were re-lettered (h) and (i) by s. 122, *ibid*.

(The First Schedule —Table A —Regulations for Management of a Company limited by Shares)

one third of the directors for the time being or if their number is not three or a multiple of three then the number nearest to one third shall retire from office

79 The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot

80 A retiring director shall be eligible for re election

81 The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto

82 If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week at the same time and place and if at the adjourned meeting the places of the vacating directors are not filled up the vacating directors or such of them as have not had their places filled up shall be deemed to have been re elected at the adjourned meeting

83 ¹[Subject to the provisions of sections 83A and 83B of the Indian Companies Act 1913] the Company may from time to time in general meeting increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office

84 Any casual vacancy occurring on the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

85 The directors shall have power at any time and from time to time to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting but shall be eligible for election by the company at that meeting as an additional director

86 The Company may by extraordinary resolution remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

Proceedings of Directors

87 The directors may meet together for the despatch of business adjourn and otherwise regulate their meetings as they think fit Questions arising at any meeting shall be decided by a majority of votes In case of an equality of votes the chairman shall have a second or casting vote A director may, and the secretary on the requisition of a director shall at any time, summon a meeting of directors

¹ Ins. by the Indian Companies (Amendment) Act 1936 (2 of 1936) s 122

(The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.)

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office ; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit ; any committee so ¹[formed] shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings : if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

¹ Subs. by the Repealing and Amending Act, 1914 (10 of 1914), Sch. I, for " found ".

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares)

97 No dividends shall be paid otherwise than out of profits ¹[of the year or any other undistributed profits]

98 Subject to the rights of persons (if any) entitled to shares with special rights as to dividends all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest be treated for the purposes of this article as paid on the share.

99 The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100 If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101 Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102 No dividend shall bear interest against the company.

Accounts

²[103 The directors shall cause to be kept proper books of account with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place
- (b) all sales and purchases of goods by the company
- (c) the assets and liabilities of the company]

³[104 The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours]

105 The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

¹ Ins. by the Indian Companies (Amendment) Act 1936 (22 of 1936) s. 122

² Subs. by s. 122 *ibid* for the original regulation

(*The First Schedule.—Table A.—Regulations for Management of a Company limited by Shares.*)

¹[106. The directors shall as required by sections 131 and 131A of the Indian Companies Act, 1913, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance-sheets, and reports as are referred to in those sections.]

107. The profit and loss account shall ²[in addition to the matters referred to in sub-section (3) of section 132 of the Indian Companies Act, 1913,] show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

109. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

Audit.

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

Notices.

112. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in British India) to the address, if any, within British India supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter contain-

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 122, for the original regulation.

² Ins. by s. 122, *ibid.*

(The First Schedule—Table A—Regulations for Management of a Company limited by Shares Table B—Table of Fees to be paid to the Registrar)

ing the notice and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post

113 If a member has no registered address in British India and has not supplied to the company an address within British India for the giving of notices to him a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears

114 A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share

115 A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased or assignee of the insolvent or by any like description at the address (if any) in British India supplied for the purpose by the persons claiming to be so entitled or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred

116 Notice of every general meeting shall be given in some manner hereinafter authorised to (a) every member of the company (including bearer of share warrants) except those members who (having no registered address within British India) have not supplied to the company an address within British India for the giving of notices to them and also to (b) every person entitled to a share in consequence of the death or insolvency of a member who but for his death or insolvency would be entitled to receive notice of the meeting No other persons shall be entitled to receive notice of general meetings

TABLE B

(See sections 249 and 252.)

TABLE OF FEES TO BE PAID TO THE REGISTRAR

I—By a company limited by shares

- 1 For registration of a company whose capital does not exceed Rs 20,000 a fee of Rs 20
 - 2 For registration of a company whose capital exceeds Rs 20,000 the above fee plus a fee of Rs 1 for every Rs 20,000 or part thereof in excess of Rs 20,000 (that is to say)—
- For every 10 (or) more of Rs 20,000 or part thereof 1 rupee and for the balance of the capital 1/2 rupee

(The First Schedule.—Table B.—Table of Fees to be paid to the Registrar.)

I.—By a company having a share capital—contd.

	Rs. A. P.
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees	5 0 0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees.	1 0 0
3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :	
Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.	
4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.	
5. For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up	5 0 0
6. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of	5 0 0

II.—By a company not having a share capital.

1. For registration of a company whose number of members, as stated in the articles of association, does not exceed 20	40 0 0
2. For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	100 0 0
3. For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.	
4. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	400 0 0
5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable ¹ [in respect of such increase] if such increase had been stated in the articles of association at the time of registration:	2*

Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.

6. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new company.

¹ Ins. by Notification No. 1-D., dated 3rd November 1917, see Gazette of India, 1917, Pt. I, p. 1787.

² The figure "5" was omitted, *ibid*.

(The First Schedule—Table B—Table of Fees to be paid to the Registrar The
Second Schedule—Statement in lieu of Prospectus)

II—By a company not having a share capital—contd

	Rs	A	P
7 For filing any document by this Act required or authorised to be filed other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up	5	0	0
8 For making a record of any fact by this Act authorised or required to be recorded by the registrar a fee of	5	0	0

THE SECOND SCHEDULE

(See sections 98 and 154)

FORM I

THE INDIAN COMPANIES ACT 1913

STATEMENT IN LIEU OF PROSPECTUS

filed by

LIMITED

pursuant to section 98 of the Indian Companies Act 1913

Presented for filing by

The nominal share capital of the company	Rs		
Divided into	Shares of Rs	each	
	Rs	each	
	P's	each	
Amount (if any) of above capital which consists of redeemable preference shares	Shares of Rs	each	
The date on or before which these shares are or are liable to be redeemed			

¹ Subs by the Indian Companies (Amendment) Act, 1936 (22 of 1936) s 123, for the original Sch. II

(The Second Schedule.—Statement in lieu of Prospectus.)

Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. —shares of Rs..... fully paid. 2. —shares upon which Rs..... per share credited as paid. 3. Debenture Rs..... 4. Consideration.
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price Rs..... Cash . . . Rs..... Shares . . . Rs..... Debentures . . . Rs..... Goodwill . . . Rs.....
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or	Amount paid. Amount payable.
Rate of the commission	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses	Rs.....

(The Second Schedule.—Statement in lieu of Prospectus.)

Amount paid or intended to be paid to any promoter.	Name of promoter..... Amount Rs.....
Consideration for the payment	Consideration —
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement)	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any)	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in <small>as a partner in the business of the company</small> him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the amounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on	

(Signatures of the persons above named as directors or proposed directors or of their agents authorised in writing)

Date

(The Second Schedule.—Statement in lieu of Prospectus.)

FORM II.

THE INDIAN COMPANIES ACT, 1913.

STATEMENT IN LIEU OF PROSPECTUS

filed by

.....LIMITED,

pursuant to sub-section (1) of section 154 of the Indian Companies Act, 1913.
Presented for filing by

The nominal share capital of the Company.	Rs.....
Divided into	Shares of Rs.....each. Shares of Rs.....each. Shares of Rs.....each.
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Rs.....each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of Directors or proposed Directors and Managers or proposed Managers, and any provision in the Articles, or in any contract, as to appointment of and remuneration payable to Directors or Managers.	
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. Shares of Rs.....fully paid. 2. Shares upon which Rs.....per share credited as paid. 3. Debenture Rs. 4. Consideration.
Names and addresses of vendors of property (1) purchased or acquired by the Company within the two years preceding the date of this Statement or (2) agreed or proposed to be purchased or acquired by the Company.	

(The Second Schedule.—Statement in lieu of Prospectus.)

Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill	Total purchase price Rs Cash . . . Rs . . . Shares . . . Rs . . . Debentures . . . Rs . . . Goodwill . . . Rs
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company, or Rate of the commission	Amount paid Amount payable Rate per cent
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely	
Unless more than two years have elapsed since the date on which the Company was entitled to commence business — Estimated amount of preliminary expenses Amount paid or intended to be paid to any promoter Consideration for the payment . . .	Rs . Name of promoter Amount Rs .. Consideration
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the Company or contracts, other than contracts appointing or fixing the remuneration of a Managing Director or Managing Agent, entered into more than two years before the delivery of this statement)	
Times and places at which the contracts or copies thereof may be inspected	
Names and addresses of the Auditors of the Company.	
Full particulars of the nature and extent of the interest of every Director in the promotion of or in the property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be acquired by the Company or where the interest of such a Director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a Director, or otherwise for services rendered by him or by the firm in connection with the promotion or the formation of the Company	

(*The Second Schedule.—Statement in lieu of Prospectus. The Third Schedule.—Form A.*)

<p>If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.</p>	
<p>(Signatures of the persons above named as Directors or proposed Directors or of their agents authorised in writing.)</p>	

Dated the _____ *day of* _____ .]

THE THIRD SCHEDULE.

FORM A.

(*See sections 6 and 151.*)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the company is “ The Eastern Steam Packet Company, Limited ”.

2nd.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are “ the conveyance of passengers, and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object ”.

4th.—The liability of the members is limited.

5th.—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

(The Third Schedule —Forms A and B)

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

Names and addresses and descriptions of subscribers	Number of shares taken by each subscriber
1 A B of , merchant	200
2 C D ,	25
3 E F ,	30
4 G H ,	40
5 I J ,	15
6 K L ,	5
7 M N	10
TOTAL SHARES TAKEN	325

Dated the day of 19

Witness to the above signatures

_____ X Y of .

FORM B

(See sections 7 and 151)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

Memorandum of Association

1st —The name of the company is ' The Mutual Calcutta Marine Association, Limited '

2nd —The registered office of the company will be situate in Calcutta

3rd —The objects for which the company is established are " the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object "

4th —The liability of the members is limited

(The Third Schedule.—Form B.)

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

- " 1. A. B. of
- " 2. C. D. of
- " 3. E. F. of
- " 4. G. H. of
- " 5. I. J. of
- " 6. K. L. of
- " 7. M. N. of

Dated the *day of* .

Witness to the above signatures.

X. Y. of .

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF
ASSOCIATION.

Number of Members.

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

(The Third Schedule —Form B)

5 A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

6 The above mentioned general meetings shall be called ordinary meetings, all other general meetings shall be called extraordinary.

7 The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8 Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the Company.

9 On receipt of the requisition the directors shall forthwith proceed to call a general meeting. If they do not proceed to cause a meeting to be held within twenty one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

Proceedings at General Meetings

10 Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned or in such other manner (if any) as may be prescribed by the company in general meeting, but the non receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11 All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors.

12 No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say) — if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five, if they exceed ten, there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

(The Third Schedule.—Form B.)

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the following week at the same time and place ; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23. (1) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(2) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(The Third Schedule—Form B)

24 Any instrument appointing a proxy shall be in the following form —

Company, Limited

I, _____, of _____, being a Member of the
Company, Limited, hereby appoint _____ of _____ as my proxy
to vote for me and on my behalf at the [ordinary or extraordinary, as the
case may be] general meeting of the company to be held on the
day of _____ and at any adjournment thereof

Signed this _____ day of _____

Directors

25 The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association

26 Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Indian Companies Act, 1913 be deemed to be directors

Powers of Directors

27 The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Indian Companies Act, 1913, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made

Elections of Directors

28 The directors shall be elected annually by the company in general meeting

Business of Company

(Here insert rules as to mode in which business of insurance is to be conducted)

Audit

29 Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913 or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word 'members' were substituted for 'shareholders,' and as if 'first general meeting' were substituted for 'statutory meeting'.

*(The Third Schedule.—Forms B and C.)**Notices.*

30. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses and Descriptions of Subscribers.

“ 1. A. B. of

“ 2. C. D. of

“ 3. E. F. of

“ 4. G. H. of

“ 5. I. J. of

“ 6. K. L. of

“ 7. M. N. of

Dated the *day of* 19 .

Witness to the above signatures.

X. Y., of .

FORM C.

(See sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is “The Snowy Range Hotel Company, Limited”.

2nd.—The registered office of the company will be situate in the province of Bengal.

3rd.—The objects for which the company is established are “the facilitating travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of travellers and the doing all

(The Third Schedule—Form C)

such other things as are incidental or conducive to the attainment of the above object ”

4th—The liability of the members is limited

5th—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding fifty rupees

6th—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

Names Addresses and Descriptions of Subscribers	Number of shares taken by each Subscriber
1 A B of	200
2 C D of	25
' 3 E I of	0
4 G H of	40
' 5 I J of	15
' 6 K L of	5
" 7 M N of	10
TOTAL SHARES TAKEN	325

Dated the day of 19

Witness to the above signatures

X Y, of

Articles of Association to accompany preceding Memorandum of Association

1 The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each

(The Third Schedule.—Forms C and D.)

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Indian Companies Act, 1913, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

" 1. A. B. of _____, merchant.

" 2. C. D. of _____

" 3. E. F. of _____

" 4. G. H. of _____

" 5. I. J. of _____

" 6. K. L. of _____

" 7. M. N. of _____

Dated the _____ day of _____ 19 ____

Witness to the above signatures.

X. Y., of _____

FORM D.

(See sections 8 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY
HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Patent Stereotype Company".

2nd.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P Q., of Bombay, is the sole patentee".

(The Third Schedule —Form D)

We the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

Names Addresses and Descriptions of Subscribers	Number of shares taken by each Subscriber
1 A B of	3
2 C D of	2
3 E F of	1
4 G H of	2
5 I J of	2
6 K L of	1
7 M N of	1
TOTAL SHARES TAKEN	
	12

Dated the day of 19

Witness to the above signatures

X Y of

Articles of Association to accompany the preceding Memorandum of Association

1 The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each

2 All the articles of Table A of the Indian Companies Act 1913 shall be deemed to be incorporated with these articles and to apply to the company

Names Addresses and Descriptions of Subscribers

1 A B of	merchant
2 C D of	
3 F F of	
4 C H of	
5 I J of	
6 K L of	
7 M N of	

Dated the day of 19

Witness to the above signatures

X Y, of

(The Third Schedule —Form E)

List of Persons holding shares in the _____ Company, Limited on the _____ day of _____ 19____, and of persons who have held shares therein at any time since the date of the last return, showing their names and addresses and an account of the shares so held

[illegible]

* State the aggregate number of shares forfeited (if any)

† The aggregate number of shares held and not the distinctive numbers, must be stated and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

* When the shares are of different classes, these columns may be sub-divided so that the number of each

(Appendix I.—Table B in Schedule to Act XIX of 1857.)

APPENDIX I.

(Table B in Schedule to Act XIX of 1857.)¹

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

Shares.

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.

2. The Company may from time to time make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The Company may, if they think fit, receive, from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

¹ See s. 290 (1) (b) of the Indian Companies-Act, 1913 (7 of 1913).
The Table is reproduced here as an Appendix for convenience of reference.

*(Appendix I—Table B in Schedule to Act XIX of 1857)**Transmission of Shares*

11 The executors or administrators or representatives of a deceased shareholder shall be the only persons recognized by the Company as having any title to his share

12 Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any shareholder or in consequence of the marriage of any female shareholder or in any way other than by transfer may be registered as a shareholder upon such evidence being produced as may from time to time be required by the Company

13 Any person who has become entitled to a share in any way other than by transfer may instead of being registered himself elect to have some person to be named by him registered as a holder of such share

14 The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share

15 The instrument of transfer shall be presented to the Company accompanied with such evidence as they may require to prove the title of the transferor and thereupon the Company shall register the transferee as a shareholder

Forfeiture of Shares

16 If any shareholder fails to pay any call due on the appointed day the Company may at any time thereafter during such time as the call remains unpaid serve a notice on him requiring him to pay such call together with any interest that may have accrued by reason of such non payment

17 The notice shall name a further date and a place or places being a place or places at which calls on the Company are usually made payable on and at which such call is to be paid, it shall also state that in the event of non payment at the time and place appointed the shares in respect of which such call was made will be liable to be forfeited

18 If the requisitions of any such notice as aforesaid are not complied with any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect

19 Any shares so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Company thinks fit

20 Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture

Increase in Capital

21 The Company may, with the sanction of the Company previously given in general meeting increase its capital

22 Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all

(Appendix I.—Table B in Schedule to Act XIX of 1857.)

respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General Meetings.

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the ¹[first Monday in February] in every year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say); if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after

¹ The bracketted portien read originally as follows: " day of "

(Appendix I —Table B in Schedule to Act XIX of 1857)

fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty

33 If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved, in any other case it shall stand adjourned to the following day at the same time and place, and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*

34 The chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company

35 If there is no such chairman or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting

36 The chairman may, with the consent of the meeting adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place

37 At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38 If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting

Votes of Shareholders

39 Every shareholder shall have one vote for every share up to ten, he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares

40 If any shareholder is a lunatic or idiot, he may vote by his committee; and if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one

41 If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same

42 No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares

(Appendix I.—Table B in Schedule to Act XIX of 1857.)

43. Votes may be given either personally or by proxies ; a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote ; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the directors, and the names of the first directors shall be determined by the subscribers of the memorandum of association.

46. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by this Act or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

48. The office of director shall be vacated—

if he holds any other office or place of profit under the Company ;

if he becomes bankrupt or insolvent ;

if he is concerned in or participates in the profits of any contract with the Company ;

if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions :—that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director ; nevertheless he shall not vote in respect of such contract or work ; and, if he does so vote, his vote shall not be counted, and he shall incur a penalty, not exceeding five hundred rupees.

*(Appendix I—Table B in Schedule to Act XIX of 1857)**Rotation of Directors*

49 At the first ordinary meeting after the incorporation of the Company the whole of the directors shall retire from office, and at the first ordinary meeting in every subsequent year, one third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office

50 The one third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot, in every subsequent year the one third or other nearest number who have been longest in office shall retire

51 A retiring director shall be re eligible

52 The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons

53 If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place, and if at such adjourned meeting no election takes place the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year

54 The Company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office

55 Any casual vacancy occurring in the Board of Directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred

Proceedings of Directors

56 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit, and determine the quorum necessary for the transaction of business, questions arising at any meeting shall be decided by a majority of votes, in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote, a director may at any time summon a meeting of the directors

57 The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting

58 The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, any committee so formed shall, in the exercise of the powers so delegated, make any regulations that may be imposed on them by the directors

(Appendix I.—Table B in Schedule to Act XIX of 1857.)

43. Votes may be given either personally or by proxies ; a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote ; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the directors, and the names of the first directors shall be determined by the subscribers of the memorandum of association.

46. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by this Act or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

48. The office of director shall be vacated—

if he holds any other office or place of profit under the Company ;

if he becomes bankrupt or insolvent ;

if he is concerned in or participates in the profits of any contract with the Company ;

if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions :—that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director ; nevertheless he shall not vote in respect of such contract or work ; and, if he does so vote, his vote shall not be counted, and he shall incur a penalty, not exceeding five hundred rupees.

*(Appendix I —Table B in Schedule to Act XIX of 1857)**Rotation of Directors*

49 At the first ordinary meeting after the incorporation of the Company the whole of the directors shall retire from office , and at the first ordinary meeting in every subsequent year, one third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office

50 The one third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot , in every subsequent year the one third or other nearest number who have been longest in office shall retire

51 A retiring director shall be re eligible

52 The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons

53 If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place, and, if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year

54 The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office

55 Any casual vacancy occurring in the Board of Directors may be filled up by the directors , but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred

Proceedings of Directors

56 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit, and determine the quorum necessary for the transaction of business , questions arising at any meeting shall be decided by a majority of votes , in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote , a director may at any time summon a meeting of the directors

57 The directors may elect a chairman of their meetings and determine the period for which he is to hold office , but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting

58 The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors

(*Appendix I.—Table B in Schedule to Act XIX of 1857.*)

59. A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper: questions at any meeting shall be determined by a majority of votes of the members present; and in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62. The director shall cause minutes to be made in books provided for the purpose—

- (1) of all appointments of officers made by the directors;
- (2) of the names of the directors present at each meeting of directors and committees of directors;
- (3) of all orders made by the directors and committees of directors; and
- (4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors.

And any such minute as aforesaid if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends.

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

(Appendix I —Table B in Schedule to Act XIA of 1857.)

66 The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise

67 Notice of any dividend that may have been declared shall be given to each shareholder or sent by post or otherwise to his registered place of abode ; and all dividends unclaimed for three years after having been declared, may be forfeited by the directors for the benefit of the Company

68 No dividend shall bear interest as against the Company

Accounts

69 Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting

70 The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment salaries, and other like matters ; every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year

71 A balance sheet shall be made out in every year, and laid before the general meeting of the Company, and such balance sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit

72 A printed copy of such balance sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder

Audit

73 The accounts of the Company shall be examined, and the correctness of the balance sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting

74 If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him

75 The auditors need not be shareholders in the Company no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company, and no director or other officer of the Company is eligible during his continuance in office

(Appendix I.—Table B in Schedule to Act XIX of 1857.)

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election.

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company ; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts ; and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs ; and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory ; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders, at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders ; and notice so given shall be sufficient notice to all the proprietors of such share.

(Appendix I - Table B in Schedule to Act XIX of 1857.)

FORM OF BALANCE-SHEET REFERRED TO IN TABLE B,
Balance-Sheet of the* *Company made up to* *18* . *Cr.*

CAPITAL AND LIABILITIES			PROPERTY AND ASSETS		
I.—CAPITAL .	It a p	It a p	II.—PROPERTY HELD BY THE COMPANY	It a p	It a p
1	SHOWING— The total amount received from the shareholders, showing also— (a) The number of shares (b) The amount paid for share (c) Any arrears of such the nature of dividends and the names of the shareholders and the names of the directors and the names of the officers of the Company to be separately stated (d) The amount of any funded debt		4	SHOWING— Immovable property, distinguishing— (a) Land (describing tenure) (b) Buildings (c) Movable property, distinguishing— (d) Stock in trade (e) Plant (The cost to be stated with deduction for depreciation in value as charged to the Reserve Fund or Profit and Loss)	
II.—DEBTS AND LIABILITIES OF THE COMPANY	2	3	IV.—DEBTS OWING TO THE COMPANY	6	
	SHOWING— The amount of loans on mortgage or debenture bonds				
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	3	4			
	5	6			
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	9	10			
	11	12			
	13	14			
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* See clauses 71 and 72 of the foregoing Table B

(Appendix II.—Table A in the First Schedule to Act VI of 1882.)

APPENDIX II.

(Table A in the First Schedule to Act VI of 1882.)¹

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate is worn out or lost, it may be renewed on payment of eight annas or such less sum as the Company in general meeting may prescribe.

Calls on Shares.

(4) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and, upon the moneys so paid in advance, or so much thereof as from time to time exceed the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

¹ See section 290 (I) (c) of the Indian Companies Act, 1913 (VII of 1913)
The Table is reproduced here as an Appendix for convenience of reference.

(Appendix II.—Table A in the First Schedule to Act VI of 1882.)

Transfers of Shares.

(8) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9) Shares in the Company shall be transferred in the following form :

I, A B of _____, in consideration of the sum of rupees _____
paid to me by C D of _____, do hereby

transfer to the said C D the share (or shares) numbered _____
standing in my name in the books of the _____ Company, to hold
unto the said C D, his executors, administrators and assigns, subject to the
several conditions on which I held the same at the time of the execution
thereof ; and I, the said C D, do hereby agree to take the said share (or shares)
subject to the same conditions. As witness our hands the
day of _____.

(10) The Company may decline to register any transfer of shares made by a member, who is indebted to them

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year

Transmission of Shares.

(12) The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his share.

(13) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as

(Appendix II.—Table A in the First Schedule to Act VI of 1882.)

the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Company in general meeting thinks fit.

(21) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

(23) The directors may, with the sanction of the Company previously given in general meeting, convert any paid up shares into stock.

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(Appendix II —Table A in the First Schedule to Act VI of 1882)

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of the consolidated stock as would not, if existing in shares have conferred such privileges or advantages

Increase in Capital

(26) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place as the directors may determine

(30) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting, and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors

(31) The above mentioned general meetings shall be called ordinary meetings, all other general meetings shall be called extraordinary.

(Appendix II.—Table A in the First Schedule to Act VI of 1882.)

(32) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meeting.

(35) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37) No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say :—If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

(38) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

(39) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place but no business shall be

(Appendix II —Table A in the First Schedule to Act VI of 1882)

transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place

(42) At any general meeting unless a poll is demanded by at least five members a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution

(43) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs and the result of such poll shall be deemed to be the resolution of the Company in general meeting In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote

Votes of Members

(44) Every member shall have one vote for every share up to ten He shall have an additional vote for every five shares beyond the first ten shares up to one hundred and an additional vote for every ten shares beyond the first hundred shares

(45) If any member is a lunatic or idiot he may vote by his committee or other legal curator and if any member is a minor, he may vote by his guardian or any one of his guardians if more than one

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares and no other shall be entitled to vote in respect of the same

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote

(48) Votes may be given either personally or by proxy

(49) The instrument appointing a proxy shall be in writing under the hand of the appointor or, if such appointor is a corporation under their common seal and shall be attested by one or more witness or witnesses No person shall be appointed a proxy who is not a member of the Company

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution

(Appendix II.—Table A in the First Schedule to Act VI of 1882.)

(51) Any instrument appointing a proxy shall be in the following form :—

I, _____, of _____, being a member of the _____ Company, Limited, and entitled to vote or _____ votes, hereby appoint _____, of _____, as my proxy to vote for me and on my behalf at the [ordinary or extraordinary as the case may be] general meeting of the Company to be held on the _____ day of _____, and at any adjournment thereof (or at any meeting of the Company that may be held in the year _____).
As witness my hand, this _____ day of _____, Signed by the said _____ in the presence of _____.

Directors.

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.

(55) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting ; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57) The office of director shall be vacated—
if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company ;
if he becomes bankrupt or insolvent ;
if he is punished under any of the penal provisions of the foregoing Act ;
if he is concerned in or participates in the profits of any contract with the Company.

(Appendix II —Table A in the First Schedule to Act VI of 1882)

But the above rules shall be subject to the following exceptions —that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with or done any work for, the Company of which he is director, nevertheless he shall not vote in respect of such contract or work and if he does so vote, his vote shall not be counted

Rotation of Directors

(58) At the first ordinary meeting after the registration of the Company the whole of the directors shall retire from office and at the first ordinary meeting in every subsequent year one third of the directors for the time being or, if their number is not a multiple of three, then the number nearest to one third shall retire from office

(59) The one third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall unless the directors agree among themselves be determined by ballot. In every subsequent year the one third or other nearest number who have been longest in office shall retire

(60) A retiring director shall be re-eligible

(61) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons

(62) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up the vacating directors or such of them as have not had their places filled up shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up

(63) The Company may from time to time in general meeting increase or reduce the number of directors and may also determine in what rotation such increased or reduced number is to go out of office

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred

(65) The Company in general meeting may by a special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed

Proceedings of Directors

(66) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit and determine

(Appendix II.—Table A in the First Schedule to Act VI of 1882.)

the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office ; but, if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committees so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present ; and, in case of an equality of votes, the chairman shall have a second or casting vote.

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73) No dividend shall be payable except out of the profits arising from the business of the Company.

(74) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof ; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(Appendix II —Table A in the First Schedule to Act VI of 1882)

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company

(77) No dividend shall bear interest as against the Company.

Accounts

(78) The directors shall cause true accounts to be kept—

of the stock in trade of the Company,

of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place, and

of the credits and liabilities of the Company

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meetings shall be open to the inspection of the members during the hours of business

(79) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting

(80) The statement so made shall show arranged under the most convenient heads, the amount of gross income distinguishing the several sources from which it has been derived and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year

(81) A balance sheet shall be made out in every year and laid before the Company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table or as near thereto as circumstances admit

(82) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served

(Appendix II.—Table A in the First Schedule to Act VI of 1882.)

Audit.

(83) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86) The auditors may be members of the Company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company, and no director or other officer of the Company is eligible during his continuance in office.

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89) Any auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91) If no election of auditors is made in manner aforesaid the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year and fix the remuneration to be paid to him by the Company for his services.

(92) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and in such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

(Appendix II —Table A in the First Schedule to Act VI of 1882)

Notices

1

(95) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office

(Appendix II.—Table A in Schedule to Act VI of 1882.)

FORM OF BALANCE-SHEET REFERRED TO IN TABLE A.

Balance-sheet of the* *Company made up to* *18* *Cr.*

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
	RS.	AS.	
I.—CAPITAL.			
II.—DEBTS AND LIABILITIES OF THE COMPANY.			
1	SHOWING—		
2	The number of shares		
3	The amount paid per share		
4	If any arrears of calls, the nature of the arrear and the names of the defaulters		
5	The particulars of any forfeited shares		
6	SHOWING—		
	The amount of loans or mortgages or debenture bonds		
	The amount of debts owing by the Company—distinguishing—		
	(a) Debts for which acceptances have been given		
	(b) Debts to tradesmen for supplies of stock-in-trade or other articles		
	(c) Debts for law expenses		
	(d) Debts for interest on debentures or other loans		
	(e) Unclaimed dividends		
	(f) Debts not enumerated above		
VI.—RESERVE FUND			
	SHOWING—		
	The amount set aside from profits to meet contingencies		
VII.—PROFIT AND LOSS.			
	SHOWING—		
	The disposable balance for payment of dividends, etc		
CONTINGENT LIABILITIES.			
	Claims against the Company not acknowledged as debts.		
	Moneys for which the Company is contingently liab		

* See clauses 81 and 82 of the foregoing Table A.

THE DESTRUCTIVE INSECTS AND PESTS ACT, 1914

ACT No II OF 1914¹

[3rd February 1914]

An Act to prevent the introduction into British India of any insect, fungus or other pest which is or may be destructive to crops

WHEREAS it is expedient to make provision for preventing the introduction into British India of any insect fungus or other pest which is or may be destructive to crops It is hereby enacted as follows —

1. This Act may be called the Destructive Insects and Pests Act 1914 Short title

2 In this Act unless there is anything repugnant in the subject or Definitions context —

(a) crops" includes all agricultural or horticultural crops and trees or bushes,

(b) ' import means the bringing or taking by sea [land or air] ²[across any customs frontier as defined by the Central Government] and

(c) ' infection means infection by any insect fungus or other pest injurious to a crop

3 (1) The [Central Government] may by ³ notification in the ⁴ [Official Gazette] prohibit or regulate subject to such restrictions and conditions as Power of Central Government to regulate or prohibit the import of articles likely to infect ⁵ [it] may impose the import into British India, or any part thereof or any specified place therein of any article or class of articles likely to cause infection to any crop

(2) A notification under this section may specify any article or class of articles either generally or in any particular manner whether with reference to the country of origin or the route by which imported or otherwise

4 A notification under section 3 shall operate as if it had been issued Operation of notification under section 3 under section 19 of the Sea Customs Act 1878 and the officers of Customs at every port shall have the same powers in respect of any article with regard to the importation of which such a notification has been issued as they have for the time being in respect of any article the importation of which is regulated restricted or prohibited by the law relating to Sea Customs and the law for the time being in force relating to Sea Customs or any such article shall apply accordingly

¹ For Statement of Objects and Reasons see Gazette of India, 1913, Pt. V, p. 176. ² Report of Select Committee on the Bill, 1914, Pt. V, p. 176. ³ The Bill was passed by the Council on 1st April 1914, Pt. VI, p. 514. ⁴ The Bill was passed by the Council on 1st April 1914, Pt. VI, p. 514. ⁵ The Bill was passed by the Council on 1st April 1914, Pt. VI, p. 514.

⁶ Subj. by the Director of Insects and Pests (Amendment) Act, 1920 (20) of 1920, s. 2, f. 1.

⁷ Ins. by the A. O. F. 1916, p. 176. ⁸ Ins. by the A. O. F. 1916, p. 176.

⁹ Subj. by the A. O. F. 1916, p. 176. ¹⁰ Subj. by the A. O. F. 1916, p. 176.

¹¹ Subj. by the A. O. F. 1916, p. 176. ¹² Subj. by the A. O. F. 1916, p. 176.

¹³ Subj. by the A. O. F. 1916, p. 176. ¹⁴ Subj. by the A. O. F. 1916, p. 176.

¹⁵ Subj. by the A. O. F. 1916, p. 176. ¹⁶ Subj. by the A. O. F. 1916, p. 176.

Power of
Provincial
Government
to make
rules.

5. (1) The ¹[Provincial Government] may ² * * * * * make rules for the detention, inspection, disinfection or destruction of any article or class of articles in respect of which a notification has been issued under section 3 or of any article which may have been in contact or proximity thereto, and for regulating the powers and duties of the officers whom it may appoint in this behalf.

(2) In making any rule under this section the ¹[Provincial Government] may direct that a breach thereof shall be punishable with fine, which may extend to one thousand rupees.

Protection
to persons
acting
under Act.

6. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

THE INDIAN COPYRIGHT ACT, 1914.

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THE FIRST SCHEDULE—PORTIONS OF THE COPYRIGHT ACT APPLICABLE TO BRITISH INDIA

THE SECOND SCHEDULE—[*Repealed*]Act No III of 1914¹

[24th February 1914]

An Act to modify and add to the provisions of the Copyright Act, 1911

WHEREAS it is expedient to modify and add to the provisions of the ² Copyright Act, 1911, in its application to British India It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

- 1 (1) This Act may be called the Indian Copyright Act 1914
- (2) It extends to the whole of British India including British Baluchistan, the District of Angul³ and the Sonthal Pargana⁴

Short title and extent.

¹ For Statement of Objects and Reasons see Gazette of India 1913 Pt V, p 163; for Pt V p 23 and for Proceedings in Council VI pp 12 and 369

² District of the Angul District. This Act has been declared to be in force in these two districts by the Abolition of Laws Resolution 1936 (4 of 1936) s 3 and Sec. 4 of the Abolition of Laws Resolution 1936 (4 of 1936) s 3 and 4 respectively

(Chapter I.—Preliminary. Chapter II.—Construction and Modification of the Copyright Act.)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “the Copyright Act” means the Act of Parliament entitled the ¹ Copyright Act, 1911; and

(2) words and expressions defined in the Copyright Act have the same meanings as in that Act. 1 & 2
5, c.

CHAPTER II.

CONSTRUCTION AND MODIFICATION OF THE COPYRIGHT ACT.

Application
of Copyright
Act to
British
India with
adaptations.

3. In the application to British India of the Copyright Act (a copy of which Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, is set out in the First Schedule), the following modifications shall be made, namely :—

(1) the powers of the Board of Trade under section 3 shall, in the case of works first published in British India, be exercised by the ² [Central Government] ;

(2) the powers of the Board of Trade under section 19 shall, as regards records, perforated rolls and other contrivances, the original plate of which was made in British India, be exercised by the ² [Central Government] ; and the confirmation of Parliament shall not be necessary to the exercise of any of these powers ;

(3) the references in section 19, sub-section (4), and in section 24, sub-section (1), to arbitration shall be read as references to arbitration in accordance with the law for the time being in force in that part of British India in which the dispute occurs ;

(4) as regards works the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, the reference in section 22 to the Patents and Designs Act, 1907, shall be construed as a ^{7 Edw. c. 20.} reference to the Indian Patents and Designs Act, 1911, and the ^{II of 19} reference in the said section to section 86 of the Patents and Designs Act, 1907, shall be construed as a reference to section ^{77 7 Edw. c. 20.} of the Indian Patents and Designs Act, 1911 ; II of 19

(5) as regards works first published in British India, the reference in section 24, sub-section (1), proviso (a), to the London Gazette and two London newspapers shall be construed as a reference to the Gazette of India and two newspapers published in British

¹ Coll. Stat., Vol. II, and *infra*.

² Subs. by the A. O. for “ G. G. in C.”

(Chapter II—Construction and Modification of the Copyright Act)

India, and the reference in proviso (b) of the same sub section of the same section to the 26th day of July, 1910, shall, as regards works the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India be construed as a reference to the 30th day of October, 1912

4 (1) In the case of works first published in British India, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work.

Modification of copyright as regards translation of works first published in British India

Provided that if within the said period the author, or any person to whom he has granted permission so to do publishes a translation of any such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed in this sub section

(2) For the purposes of sub section (1) the expression "author" includes the legal representative of a deceased author

5. In the application of the Copyright Act to musical works the authors whereof were at the time of the making of the works resident in British India, or to musical works first published in British India, the term "musical work" shall, save as otherwise expressly provided by the Copyright Act, mean "any combination of melody and harmony, or either of them, which has been reduced to writing"

Musical works made by resident of, or first published in, British India

378 6. (1) Copies made out of British India of any work in which copyright subsists which if made in British India would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Chief Customs officer, as defined in the Sea Customs Act, 1878, that he is desirous that such copies should not be imported into British India, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Customs Act, 1878

Importation of copies

378 (2) Before detaining any such copies, or taking any further steps with a view to the confiscation thereof, such Chief Customs officer or other officer appointed by him the Chief Customs officer may require the regulations under this section which he may require security, conditions or other matters, to be complied with by himself, in accordance with these regulations, that no copies shall be prohibited by this section to be imported

(3) The [Central Government] may, by notification in the Gazette make regulations either for the importation and

¹ Subs by the Central Board of Revenue in 1911

² Subs by the A O for "G. G. M. C."

³ Subs by the A O for "Gazette of India"

(Chapter II.—Construction and Modification of the Copyright Act. Chapter III.—Penalties.)

and the conditions, if any, to be fulfilled before such detention and confiscation; and may, by such regulations, determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Such regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant re-imbursing the¹ [Central Government] all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention, and may provide that notices given under the Copyright Act. to the Commissioners of Customs and Excise of the United Kingdom, and communicated by that authority to any authority in British India, shall be deemed to have been given by the owner to the said Chief Customs officer.

(6) This section shall have effect as the necessary modification of section, 14 of the Copyright Act.

CHAPTER III.

PENALTIES.

7. If any person knowingly—

- (a) makes for sale or hire any infringing copy of a work in which copyright subsists; or
- (b) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work; or
- (c) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (d) by way of trade exhibits in public any infringing copy of any such work; or
- (e) imports for sale or hire into British India any infringing copy of any such work;

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction.

8. If any person knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which may extend to five hundred rupees.

¹ Subs. by the A. O. for " Secretary of State for India in Council ".

Offences in respect of infringing copies.

Possession of plates for purpose of making infringing copies.

(Chapter III — Penalties Chapter IV — Miscellaneous)

9. If any person, after having been previously convicted of an offence punishable under section 7 or section 8, is subsequently convicted of an offence punishable under either of these sections he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both

Punishment on second conviction.

10. (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the Court may think fit

Lower of Court to dispose of infringing copies or plates for purpose of making infringing copies.

(2) Any person affected by an order under sub section (1) may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie, and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal

11. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act

Cognizance of offences.

12. The provisions of this Chapter shall not apply to any case to which section 9 of the Copyright Act regarding the restrictions on remedies in the case of a work of architecture applies

Saving in case of infringement by construction of building

CHAPTER IV

MISCELLANEOUS

13 Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the High Court or the Court of the District Judge

Courts having civil jurisdiction regarding infringement of copyright

14. No suit or other civil proceeding instituted after the 30th of October, 1912, regarding infringement of copyright in any book the author whereof was at the time of making the book resident in British India, or of any book first published in British India, shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of the Indian Copyright Act, 1817

Effect of non registration under Act XX of 1817

15. [Repeals] *Rep by the Repealing Act, 1927 (VII of 1927) s 2 and Sch*

(*The First Schedule.—Portions of the Copyright Act applicable to British India.*)

THE FIRST SCHEDULE.

PORTIONS OF THE COPYRIGHT ACT APPLICABLE TO BRITISH INDIA.

(*See Section 3.*)

COPYRIGHT ACT, 1911.

[1 & 2 GEO. 5, CH. 46.]

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10. Limitation of actions.

* * * * *

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14. Importation of copies.

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(The First Schedule—Portions of the Copyright Act of 1911 Not Enacted therein)

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(*The First Schedule.*—*Portions of the Copyright Act applicable to British In*

CHAPTER 46.

An Act to amend and consolidate the Law relating to Copyright

[16th December, 19

Be it enacted by the King's Most Excellent Majesty, by and with advice and consent of the Lords Spiritual and Temporal, and Commons this present Parliament assembled, and by the authority of the same, follows :—

PART I.

IMPERIAL COPYRIGHT.

Rights.

Copyright.

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if—

- (a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid ; and
- (b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid ;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

(2) For the purposes of this Act, " copyright " means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public ; if the work is unpublished, to publish the work or any substantial part thereof ; and shall include the sole right—

- (a) to produce, reproduce, perform, or publish any translation of the work ;
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work ;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;

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- (d) in the case of a literary dramatic or musical work to make any record perforated roll cinematograph film or other contrivance by means of which the work may be mechanically performed or delivered

and to authorise any such acts as aforesaid

(3) For the purposes of this Act publication in relation to any work, means the issue of copies of the work to the public and does not include the performance in public of a dramatic or musical work the delivery in public of a lecture the exhibition in public of an artistic work or the construction of an architectural work of art but for the purposes of this provision the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works

2 (1) Copyright in a work shall be deemed to be infringed by any person who without the consent of the owner of the copyright does anything the sole right to do which is by this Act conferred on the owner of the copyright <sup>Infringe-
ment of
copyright</sup> Provided that the following acts shall not constitute an infringement of copy right —

- (i) Any fair dealing with any work for the purposes of private study, research criticism review or newspaper summary
- (ii) Where the author of an artistic work is not the owner of the copyright therein the use by the author of any mould cast sketch plan model or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work
- (iii) The making or publishing of paintings drawings engravings, or photographs of a work of sculpture or artistic craftsmanship if permanently situate in a public place or building or the making or publishing of paintings drawings engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art
- (iv) The publication in a collection mainly composed of non copyright matter *bona fide* intended for the use of schools and so described in the title and in any advertisements issued by the publisher of short passages from published literary works not themselves published for the use of schools in which copyright subsists Provided that not more than two of such passages from works by the same author are published by the same publisher within five years and that the source from which such passages are taken is acknowledged
- (v) The publication in a newspaper of a report of a lecture delivered in public unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which

(The First Schedule.—Portions of the Copyright Act applicable to British India.)

the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries :

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire ; or

(b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright ; or

(c) by way of trade exhibits in public ; or

(d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death :

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act, thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work ; and, for the purposes of this proviso, the Board of Trade may make ¹regulations prescribing the mode in which notices are to be given, and the particulars to be given

¹ Regulations called the Indian Copyright Regulations, 1914, have been made under the proviso to s. 3 and in conjunction with sections 14 and 19 of this Act as modified in its application to British India, see Gen. R. and O., Vol. IV, p. 480.

(The First Schedule—Portions of the Copyright Act applicable to British India)

in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties

4. If, at any time after the death of the author of a literary, dramatic or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit

Compulsory
licences.

5. (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein

Ownership
of copyright,
etc

Provided that—

(a) where, in the case of an engraving photograph or portrait the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order then, in the absence of any agreement to the contrary the person by whom such plate or other original was ordered shall be the first owner of the copyright

(b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person the person by whom the author was employed shall in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical there shall (in the absence of any agreement to the contrary) be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical

(2) The owner of the copyright in any work may assign the right either wholly or partially, and either generally or subject to limitations to the United Kingdom or any self governing dominion or other part of His Majesty's dominions to which this Act extends, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be

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operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned, and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies.

Civil remedies for infringement of copyright.

6. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work ;

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the

Rights of owner against

(The First Schedule — Portions of the Copyright Act applicable to British India)

production of such infringing copies, shall be deemed to be the property of persons pos-
the owner of the copyright, who accordingly may take proceedings for the sessing or
recovery of the possession thereof or in respect of the conversion thereof dealing with
infringing
copies etc

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was
not aware of the existence of the copyright in the work the plaintiff shall
not be entitled to any remedy other than an injunction or interdict in respect
of the infringement if the defendant proves that at the date of the infringe-
ment he was not aware, and had not reasonable ground for suspecting that
copyright subsisted in the work. Exemption
of innocent
infringer
from liab-
ility to pay
damages
etc

9. (1) Where the construction of a building or other structure which Restriction
infringes or which, if completed, would infringe the copyright in some other on remedies
work has been commenced, the owner of the copyright shall not be entitled in the case
to obtain an injunction or interdict to restrain the construction of such building of architec-
ture
or structure or to order its demolition

(2) Such of the other provisions of this Act as provide that an infringing
copy of a work shall be deemed to be the property of the owner of the copyright
or as impose summary penalties, shall not apply in any case to which this
section applies

10. An action in respect of infringement of copyright shall not be com- Limitation
menced after the expiration of three years next after the infringement of actions

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*	*	*	*	*	*

Importation of Copies

14 (1) Copies made out of the United Kingdom of any work in which Importation
copyright subsists which if made in the United Kingdom would infringe copy of copies.
right, and as to which the owner of the copyright gives notice in writing by
himself or his agent to the Commissioners of Customs and Excise that he is
desirous that such copies should not be imported into the United Kingdom
shall not be so imported and shall be subject to the provisions of this section,
be deemed to be included in the table of prohibitions and restrictions con-
tained in section 42 of the Customs Consolidation Act 1876 and that section
shall apply accordingly

(2) Before detaining any such copies or taking any further proceedings
with a view to the forfeiture thereof under the law relating to the Customs
the Commissioners of Customs and Excise may require the regulations under
this section whether as to information conditions or other matters, to be
complied with and may satisfy themselves in accordance with those regula-
tions that the copies are such as are prohibited by this section to be imported.

(The First Schedule.— Portions of the Copyright Act applicable to British India.)

(3) ¹The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention : and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876 : Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

Delivery of Books to library.

15. (1) The publisher of every book published in the United Kingdom shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depot in London named in the demand a copy of the book for, or in accordance with the directions of, the authority having the control of each of the following libraries, namely : the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin ; and, subject to the provisions of this section, the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto

Delivery of
copies to
British
Museum
and other
libraries.

¹ See footnote to s. 3.

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finished and coloured in the same manner as the best copies of the book are published, and shall be bound sewed or stitched together and on the best paper on which the book is printed

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale and shall be in the like condition as the books prepared for sale

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade

(6) If a publisher fails to comply with this section he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered

(7) For the purposes of this section the expression *book* includes every part or division of a book, pamphlet sheet of letter press sheet of music, map, plan, chart or table separately published but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letter press or in the maps prints or other engravings belonging thereto

Special Provisions as to certain Works

16 (1) In the case of a work of joint authorship, copyright shall subsist ^{Work of joint authors.} during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last whichever period is the longer and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author

(2) Where, in the case of a work of joint authorship some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid

(3) For the purposes of this Act "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors

(The First Schedule.—Portions of the Copyright Act applicable to British India.)

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous
works.

17. (1) In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter and the proviso to section 3 of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

Provisions
as to
Government
publications.

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

Provisions
as to Mecha-
nical instru-
ments.

19. (1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make, within the parts of His Majesty's dominions to which this Act extends, records, perforated rolls or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

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- (b) that he has given the prescribed notice of his intention to make the contrivances and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him calculated at the rate hereinafter mentioned

Provided that—

- (i) nothing in this provision shall authorise any alterations in or omissions from the work reproduced unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by or with the consent or acquiescence of, the owner of the copyright or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question and
- (ii) for the purposes of this provision a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced

(3) The rate at which such royalties as aforesaid are to be calculated shall—

- (a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same be two and one half per cent and
- (b) in the case of contrivances sold as aforesaid after the expiration of that period be five per cent

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall in no case be less than a half penny for each separate musical work in which copyright subsists reproduced thereon and where the royalty calculated as aforesaid includes a fraction of a farthing such fraction shall be reckoned as a farthing

Provided that if at any time after the expiration of seven years from the commencement of this Act it appears to the Board of Trade that such rate as aforesaid is no longer equitable the Board of Trade may after holding a public inquiry make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament, but where an order revising the rate has been so made and confirmed no further revision shall be made before the expiration of fourteen years from the date of the last revision

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons the sums payable by way of royalties under this section

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shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions:—

(a) The conditions as to the previous making by, or with the consent or acquiescence of the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply :

(b) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the 1st day of July, 1913, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the 1st day of July, 1910 :

(c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignees, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives :

(d) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances,

¹ See footnote to s. 3.

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whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in the section

- (e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls or other contrivances by means of which the work may be mechanically performed

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived .

Provided that—

- (i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright , and
- (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first mentioned contrivance

20. Notwithstanding anything in this Act it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper Provision as to political speeches

21. The term for which copyright shall subsist in photographs shall be fifty years from making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts Provision as to photographs

22. (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process Provisions to designs registrable under 7 Edw 7, c 29

(2) General rules under section 86 of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid

(The First Schedule.—Portions of the Copyright Act applicable to British India.

Works of foreign authors first published in parts of His Majesty's dominions to which Act extends.

23. If it appears to His Majesty that a foreign country does not give or has not undertaken to give, adequate protection to the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works.

Existing works.

24. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder :

Provided that—

- (a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine ; but the person who immediately before the date at which the right would have so expired was the owner of the right or interest shall be entitled at his option either—
 - (i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration ; or
 - (ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or

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interest is the proprietor of that collective work, without any such payment.

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the London Gazette and in two London newspapers,

- (b) where any person has, before the 26th day of July, 1910 taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement may be determined by arbitration.

(2) For the purposes of this section the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section 19, sub sections (7) and (8), and of section 33 of this Act copyright shall not subsist in any work made before the commencement of this Act, otherwise than under and in accordance with, the provisions of this section.

Application to British Possessions.

25 (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions. ^{Application of Act to British dominions.} Provided that it shall not extend to a self governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the London Gazette that any self governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion

(The First Schedule.—Portions of the Copyright Act applicable to British India.)

shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

Legislative
powers of
self-govern-
ing domi-
nions.

26. (1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first-mentioned dominion, and to works first published in that dominion; but save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this subsection, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this sub-section, the expression "a dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

Power of
Legislatures
of British
possessions
to pass

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof

(The First Schedule —Portions of the Copyright Act applicable to British India)

were at the time of the making of the work resident in the possession and supplemental
to works first published in the possession legislation

28 His Majesty may by Order in Council extend this Act to any term Application
territories under his protection and to Cyprus and on the making of any such to protect-
Order this Act shall subject to the provisions of the Order have effect as if orates
the territories to which it applies or Cyprus were part of His Majesty's
dominions to which this Act extends

PART II

INTERNATIONAL COPYRIGHT

29 (1) His Majesty may by Order in Council direct that this Act (except Powers to
such parts if any thereof as may be specified in the Order) shall apply— extend Act
to foreign
works

(a) to works first published in a foreign country to which the Order
relates in like manner as if they were first published within
the parts of His Majesty's dominions to which this Act extends

(b) to literary dramatic musical and artistic works or any class
thereof the authors whereof were at the time of the making
of the works subjects or citizens of a foreign country to which
the Order relates in like manner as if the authors were British
subjects

(c) in respect of residence in a foreign country to which the Order
relates in like manner as if such residence were residence in the
parts of His Majesty's dominions to which the Act extends

and thereupon subject to the provisions of this Part of this Act and of the
Order this Act shall apply accordingly

Provided that—

(i) before making an Order in Council under this section in respect
of any foreign country (other than a country with which His
Majesty has entered into a convention relating to copyright)
His Majesty shall be satisfied that that foreign country has
made or has undertaken to make such provisions if any as it
appears to His Majesty expedient to require for the protection
of works entitled to copyright under the provisions of Part I
of this Act

(ii) the Order in Council may provide that the terms of copyright
within such parts of His Majesty's dominions as aforesaid shall
not exceed that conferred by the law of the country to which
the Order relates

(iii) the provisions of this Act as to the delivery of copies of books
shall not apply to works first published in such country,
except so far as is provided by the Order

(The First Schedule.—Portions of the Copyright Act applicable to British India.)

- (iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order ;
- (v) in applying the provisions of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country ;
- (vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section 5 of the International Copyright Act, 1886.

(2) An Order in Council under this section may extend to all the several countries named or described therein.

Application
of Part II
to British
possessions.

30. (1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possessions specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like Orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions and the provisions of this Part of this Act shall, with necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions, not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III.

SUPPLEMENTAL PROVISIONS.

Abrogation
of common
law rights.

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

14 : Act III.]

The First Schedule — Portions of the Copyright Act applicable to British India

32. (1) His Majesty in Council may make Orders for altering, revoking, or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests

(2) Every Order in Council made under this Act shall be published in the London Gazette and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act

33 Nothing in this Act shall deprive any of the universities and colleges Saving of University copyright mentioned in the Copyright Act 1775, of any copyright they already possess in copyright

34 There shall continue to be charged on and paid out of the Consoli- Saving of dated Fund of the United Kingdom such annual compensation as was compensa- tion to immediately before the commencement of this Act payable in pursuance of certain any Act is compensation to a library for the loss of the right to receive libraries gratuitous copies of books

Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library

35. (1) In this Act unless the context otherwise requires —

“Literary work” includes maps charts plans tables and compila-
tions,

“Dramatic work” includes any piece for recitation choreographic work or entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character

“Artistic work” includes works of painting drawing sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs,

“Work of sculpture” includes casts and models,

“Architectural work of art” means any building or structure having an artistic character or design in respect of such character or design or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design and shall not extend to processes or methods of construction,

“Engravings” include etchings lithographs, wood cuts prints and other similar works, not being photographs,

Interpre-
tation

(The First Schedule.—Portions of the Copyright Act applicable to British India.)

“ Photograph ” includes photo-lithograph and any work produced by any process analogous to photography ;

“ Cinematograph ” includes any work produced by any process analogous to cinematography ;

“ Collective work ” means—

(a) an encyclopædia, dictionary, year-book, or similar work,

(b) a newspaper, review, magazine, or similar periodical ; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated ;

“ Infringing,” when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation made or imported in contravention of the provisions of this Act ;

“ Performance ” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument ;

“ Delivery,” in relation to a lecture, includes delivery by means of any mechanical instrument ;

“ Plate ” includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made ;

“ Lecture ” includes address, speech, and sermon ;

“ Self-governing dominion ” means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council.

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring

Copyright

1914 : Act III.]

The First Schedule—Portions of the Copyright Act applicable to British India)

copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part

36. Subject to the provisions of this Act, the enactments mentioned in Repeal the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part

37. (1) This Act may be cited as the Copyright Act, 1911

(2) This Act shall come into operation—
(a) in the United Kingdom, on the 1st day of July, 1912, or such earlier date as may be fixed by Order in Council,

(b) in a self governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion,

(c) in the Channel Islands, at such date as may be fixed by the States of those Islands respectively,

(d) in any other British possession to which this Act extends on the proclamation thereof within the possession by the Governor

Short title
and com-
mencement.

SCHEDULES

FIRST SCHEDULE

Section 24

EXISTING RIGHTS

Existing Right	Substituted Right
Copyright	(a) <i>In the case of Works other than Dramatic and Musical Works</i> Copyright as defined by this Act *
Both copyright and performing right	(b) <i>In the case of Musical and Dramatic Works</i> Copyright as defined by this Act *
Copyright but not performing right	Copyright as defined by this Act except the sole right to perform the work or any substantial part thereof in public
Performing right, but not copyright	The sole right to perform the work in public but none of the other rights comprised in copyright as defined by this Act

* In the case of an essay, article or portion forming part of and first published in a review magazine or other periodical or work of a like nature the right shall be subject to any right publishing the essay article or portion in a separate form to which the author is entitled at the commencement of this Act or would if this Act had not been passed, have become entitled under section eighteen of the Copyright Act 1842

(*The First Schedule.*—*Portions of the Copyright Act applicable to British India.*)

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings :—

“ Copyright,” in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work ;

“ Performing right,” in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Geo. 2, c. 13 . .	The Engraving Copyright Act, 1734	The whole Act.
7 Geo. 3, c. 38 . .	The Engraving Copyright Act, 1767	Ditto.
15 Geo. 3, c. 53 . .	The Copyright Act, 1775 . . .	Ditto.
17 Geo. 3, c. 57 . .	The Prints Copyright Act, 1777 . .	Ditto.
54 Geo. 3, c. 56 . .	The Sculpture Copyright Act, 1814	Ditto.
3 & 4 Will. 4, c. 15 . .	The Dramatic Copyright Act, 1833 .	Ditto.
5 & 6 Will. 4, c. 65 . .	The Lectures Copyright Act, 1835 .	Ditto.
6 & 7 Will. 4, c. 59 . .	The Prints and Engravings Copyright (Ireland) Act, 1836.	Ditto.
6 & 7 Will. 4, c. 110 . .	The Copyright Act, 1836 . . .	Ditto.
5 & 6 Vict., c. 45 . .	The Copyright Act, 1842 . . .	Ditto.
7 & 8 Vict., c. 12 . .	The International Copyright Act, 1844.	Ditto.
10 & 11 Vict., c. 95 . .	The Colonial Copyright Act, 1847 .	Ditto.
15 & 16 Vict., c. 12 . .	The International Copyright Act, 1852.	Ditto.
25 & 26 Vict., c. 68 . .	The Fine Arts Copyright Act, 1862	Sections 1 to 6. In section 8 the words “ and pursuant to any Act for the protection of copyright engravings”, and “ and in any such Act as aforesaid.” Sections 9 to 12.

(The First Schedule — Portions of the Copyright Act applicable to British India)

Session and Chapter	Short Title	Extent of Repeal
38 & 39 Vict, c 12	The International Copyright Act, 1875	The whole Act
39 & 40 Vict, c 36	The Customs Consolidation Act, 1876	Section 42 from Books wherein to such copyright will expire Sections 44, 45 and 152
45 & 46 Vict, c 40	The Copyright (Musical Compositions) Act, 1882	The whole Act
49 & 50 Vict, c 33	The International Copyright Act, 1886	Ditto
51 & 52 Vict, c 17	The Copyright (Musical Compositions) Act, 1888	Ditto
52 & 53 Vict, c 42	The Pevnue Act, 1889	Section 1 from Books first published to as provided in that section
6 Edw 7, c 36	The Musical Copyright Act 1901	In section 3 the words and which has been registered in accordance with the provisions of the Copyright Act 1812 or of the International Copyright Act 1844 which registration may be effected notwithstanding anything in the International Copyright Act 1886

THE SECOND SCHEDULE — [REPEAL OF ENACTMENTS] Rep by the
 Repealing Act 1927 (XII of 1927) * 2 and Sch

THE INDIAN MOTOR VEHICLES ACT 1914

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ACT No. VIII OF 1914.¹

[28th February, 1914.]

An Act to consolidate and amend the law relating to motor vehicles in British India.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Indian Motor Vehicles Act, 1914.

¹ For Statement of Objects and Reasons, see Gazette of India, 1913, Pt. V, p. 186 ; for Report of Select Committee, see *ibid.*, 1914, Pt. V, p. 59 ; and for Proceedings in Council, see *ibid.*, 1913, Pt. VI, p. 566, and *ibid.*, 1914, Pt. VI, pp. 64, 325 and 496.

This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch., and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been amended in its application to Bombay by the Indian Motor Vehicles (Bombay Amendment) Act, 1931 (Bom. 7 of 1931) and the Indian Motor Vehicles (Bombay Amendment) Act, 1935 (Bom. 14 of 1935) ; to U. P., by the Indian Motor Vehicles (U. P. Amendment) Act, 1935 (U. P. 6 of 1935).

(Part I—Preliminary Part II—Provisions of General Application)

(2) This Act, except Part III thereof, extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti. Part III extends in the first instance only to the Provinces of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab,¹ Bihar and Orissa, the North-West Frontier Province and Delhi. The ²[Provincial Government] of any other Province may, by notification in the ³[Official Gazette], extend Part III to the whole or any part of such province.

(3) It shall come into force on such ⁴date as the ⁵[Central Government], by notification in the ⁶[Official Gazette], may direct.

2. "Motor vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially,

"prescribed" means prescribed by rules under this Act,

"public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass.

PART II

PROVISIONS OF GENERAL APPLICATION

3. (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) No owner or person in charge of a motor vehicle shall allow any person under the age of eighteen years to drive the same in any public place, and in the event of a contravention of sub section (1), the Court may presume that the motor vehicle was driven with the consent of the owner or person in charge.

4. The person in charge of a motor vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

(a) when required to do so by any police officer for the purpose of regulating traffic or of ascertaining his name and address with a view to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder or

¹ The word "Burma" rep by the A O

² Subs by the A O for L G

³ Subs by the A O for 'local Official Gazette

⁴ For extension of Pt III of this Act to—

C. P. D. G. O. P. Gazette 1915 Pt I p 496

Pt II, p 580

Assam see Assam Local R. and O.,

C. P. D. G. O. P. Gazette 1926 Pt II, p 1220

Vol IV, p 490

(Part II.—Provisions of General Application. Part III.—Licensing and Control.)

- (b) when required to do so by any person having charge of any animal if such person apprehends that the animal is, or will be, alarmed by the motor vehicle, or
- (c) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle in charge of a person owing to the presence of the motor vehicle, and he shall also, if so required, give his name and address and the name and address of the owner of such motor vehicle.

Reckless driving.

5. Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place, and the amount of traffic which actually is at the time or which might reasonably be expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees.

PART III.

LICENSING AND CONTROL.

Licensing of drivers.

6. No person shall drive a motor vehicle in a public place unless he is licensed in the prescribed manner, and no owner or person in charge of a motor vehicle shall allow any person who is not so licensed, to drive it :

Provided that, subject to rules made by the ¹[Provincial Government] in this behalf, this section shall not apply to a person receiving instruction in driving a motor vehicle.

Transfer of licence.

7. The holder of a licence shall not allow it to be used by any other person.

Production of licence.

8. The driver of a motor vehicle shall produce his licence upon demand by any police-officer.

Extent of validity of licence to drive.

9. Every licence to drive a motor vehicle shall be valid in such area as may be specified therein :

Provided that no licence shall specify any area outside the Province in which it is granted, unless it is issued ²* * * in accordance with such conditions and restrictions as ³[the Provincial Government of that area] may impose.

Registration of motor vehicles.

10. (1) The owner of every motor vehicle shall cause it to be registered in the prescribed manner.

(2) Such registration shall be valid in such area as may be specified in the certificate of registration :

¹ Subs. by the A. O. for "L. G."

² The words "by such authority and" rep. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 3 and Sch. II.

³ Subs. by the A. O. for "the G. G. in C."

7 of 1920) s 2

(Part III.—*Licensing and Control.* Part IV.—*Motor Vehicles temporarily leaving or visiting British India.*)

- (f) prescribing the precautions to be observed when motor vehicles are standing in any public place ;
- (g) limiting the speed at which motor vehicles may be driven generally or in any particular public place ;
- (h) prohibiting or regulating the driving of motor vehicles in public places, where their use may, in the opinion of the ¹[Provincial Government], be attended with danger or inconvenience to the public ; and
- (i) providing generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic.

(3) All rules made under this section shall be published in the ²[Official Gazette]; and, on such publication, shall have effect as if enacted in this Act.

Posting of notices.

12. The prescribed authority shall give, in the prescribed manner, public notice of any rule, made by the ¹[Provincial Government] under section 11, prohibiting or regulating the driving of motor vehicles in any public place ; or limiting the speed of motor vehicles in any such place ; and for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers.

Power to Provincial Government to exclude areas or motor vehicles from this Part.

13. The ¹[Provincial Government] may, by notification in the ²[Official Gazette], exclude any area specified in such notification from the operation of this Part ; and may, by a like notification, exempt either generally or for a specified period any motor vehicle or class of motor vehicles from the operation of all or any of the provisions of this Part.

PART IV.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING BRITISH INDIA.

Power of Central Government to make rules.

14. (1) The ³[Central Government] may ⁴[for the purpose of implementing any international Convention relating to motor traffic] make ⁵rules for all or any of the following purposes, namely :—

- (i) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking

¹ Subs. by the A. O. for " L. G. "

² Subs. by the A. O. for " local Official Gazette ".

³ Subs. by the A. O. for " G. G. in C. "

⁴ Ins. by the A. O.

⁵ For such rules, see the Motor Vehicles International Circulation Rules, published with Home Dept. Notification No. F-438/32, dated 1st August, 1933.

(Part II —Motor Vehicles temporarily leaving or visiting British India Part V —Miscellaneous)

their motor vehicles out of British India, or to drivers of such vehicles when proceeding out of British India for the purpose of driving such vehicles, and

(u) prescribing the conditions subject to which motor vehicles brought temporarily into British India by persons intending to make a temporary stay there may be possessed used and driven

(2) All rule made under this section shall be published in the ¹[Official Gazette], and, on such publication shall have effect as if enacted in this Act

15. Nothing in this Act or in any rule made ²[by the ³ Provincial Govern Saving ment] under section 11] relating to—

(a) the registration of motor vehicles

(b) requirements as to construction identification or equipment of such vehicles or

(c) the licensing or qualifications of drivers of such vehicles,

shall apply in the case of any motor vehicle ⁴[governed by rules made under] clause (u) of sub section (1) of section 14, or of any person possessing, using or driving the same, provided that the requirements of ⁵[the said rules] applicable to such vehicle or person are complied with

PART V

MISCELLANEOUS

16. Whoever contravenes any of the provisions of this Act or of any rule ^{Penalties} made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees and in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees

17 No Court inferior to that of a Presidency Magistrate or a Magistrate ^{Cognizance} of the second class shall try any offence punishable under this Act or any rule made thereunder ^{of offences}

¹ Subs by the A O for Gazette of India

² The words and figures by the L G under s 11 were subs by the Amending Act, 1916 (13 of 1916) s 2 and Sch for thereunder

³ Subs by the A O for L G

⁴ Subs by the A O for such as is referred to in

⁵ Subs by the A O for "any rule made under the said clause and

(Part V.—Miscellaneous. Schedule.—Enactments repealed.)

Cancellation and suspension of licence and disqualification for obtaining licence.

18. (1) A ¹[Provincial Government] may, in its discretion,—

(i) cancel or suspend any licence granted under this Act, and

(ii) declare any person disqualified for obtaining a licence under this Act either permanently or for such period as it thinks fit.

²[(1A) The prescribed authority may subject to such conditions and limitations as may be prescribed, cancel or suspend any licence granted under this Act.]

(2) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a motor vehicle shall, if such person holds a licence under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his licence, if any, exercise the like powers as are conferred by sub-section (1) on the ¹[Provincial Government]:

Provided that no order made by a Court under this sub-section shall affect any person or licence for a period exceeding one year from the date of such conviction.

(3) Any Court before which the holder of a licence under this Act is accused of any offence mentioned in sub-section (2) may suspend such licence until the termination of the proceedings before it.

(4) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence, and a copy of every endorsement, in accordance with the provisions of this section, shall be sent to the authority by which such licence has been granted.

(5) Every holder of a licence shall, when called upon to do so, produce his licence before any authority acting under this section.

(6) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall, during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a licence.

(7) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain, a licence without giving particulars of such endorsement or disqualification.

19. [*Repeals.*] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

SCHEDULE.—[ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

¹ Subs. by the A. O. for "L. G."

² Ins. by the Indian Motor Vehicles (Amendment) Act, 1920 (27 of 1920), s. 3.

THE LOCAL AUTHORITIES LOANS ACT, 1914

ACT No IX OF 1914¹

[28th February, 1914]

An Act to consolidate and amend the law relating to the grant of loans to Local Authorities

WHEREAS it is expedient to consolidate and amend the law relating to the borrowing powers of local authorities, It is hereby enacted as follows —

1. (1) This Act may be called the Local Authorities Loans Act 1914

Preamble
Short title
and extent

(2) ~~It extends to the whole of British India, including the Sonthal-Parganas.~~

2. In this Act, "local authority" means any person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area,

Definitions

"funds", used with reference to any local authority includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess rate duty or tax which such authority is legally entitled to impose, and any property vested in such authority,

"prescribed" means prescribed by rules made under this Act, and

"work" includes a survey, whether incidental to any other work or not

~~"The Government" or "the appropriate Government" means, in relation to cantonment authorities and in relation to port authorities in major ports, the Central Government and in relation to other local authorities, the Provincial Government]~~

3. (1) A local authority may subject to the prescribed conditions borrow on the security of its funds or any portion thereof for any of the following purposes, namely —

Borrowing
powers of
local author-
ities

- (i) the carrying out of any works which it is legally authorized to carry out,
- (ii) the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity,
- (iii) the prevention of the outbreak or spread of any dangerous epidemic disease,
- (iv) any measures which may be connected with or ancillary to any purposes specified in clauses (ii) and (iii),
- (v) the repayment of money previously borrowed in accordance with law

f India 1914, Pt V, p 5, for Re
or Proceedings in Council *see ibid*,

5 of the Scheduled Districts Act

P by the Local Authorities Loan

¹ Ins by the A O

Provided that nothing in clause (v) shall be deemed to empower a local authority to fix a period for the repayment of any money borrowed thereunder which, when the period fixed for the repayment of the money previously borrowed is taken into account, will exceed the maximum period fixed for the repayment of a loan by or under any enactment for the time being in force.

¹[Provided further that, in the case of loans other than loans made by the ²[~~appropriate Government~~], no amount exceeding twenty-five lakhs of rupees shall be borrowed unless the terms, including the date of flotation, of such loan have been approved by the ³[~~appropriate Government~~].]

(2) Nothing in this section shall be deemed to authorize any local authority—

(a) to borrow or spend money for any purpose for which, under the law for the time being in force, it is not authorized to apply its funds, or

(b) to borrow money by means of the issue of bills or promissory notes payable within any period not exceeding twelve months.

4. (1) The ⁴[~~appropriate Government~~] may make ⁵rules consistent with this Act as to—

(i) the nature of the funds on the security of which money may be borrowed ;

(ii) the works for which money may be borrowed ;

(iii) the manner of making applications for permission to borrow money ;

(iv) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries ;

(v) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published ;

(vi) the cases in which the ²[~~appropriate Government~~] may make loans ⁶* * * ;

⁷[(vii) the cases in which local authorities may take loans from persons other than the ²[~~appropriate Government~~] ;]

(viii) the manner of recording and enforcing the conditions on which money is to be borrowed ;

(ix) the manner and time of making or raising loans ;

(x) the inspection of any works carried out by means of loans ;

¹ This proviso was ins. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

² Subs. by the A. O. for " L. G. "

³ Subs. by the A. O. for " G. G. in C. "

⁴ Subs. by the A. O. for the words " L. G. " which were subs. by Act 38 of 1920, s. 2 and Sch. I, for " G. G. in C. "

⁵ For rules applying to all local authorities in Chief Commissioners' Provinces and to Cantonment authorities and port authorities of major ports in Governors' Provinces, see the local Authorities Loans (Central) Rules, 1937 (published in Gazette of India, 1937, Pt. I, p. 1902) ; and for rules applying to other local authorities in Governors' Provinces, see the Local Authorities Loans Rules, 1915 (Gen. R. and O., Vol. IV, p. 504).

⁶ Certain words were rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

⁷ Subs. by s. 2 and Sch. I., *ibid.*, for the original clause.

- (vi) the instalments, if any, by which loans shall be repaid, the interest to be charged on loans and the manner and time of repaying loans and of paying the interest thereon,
- (vii) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan,
- (viii) the attachment of such funds, and the manner of disposing of or collecting them,
- (xiv) the accounts to be kept in respect of loans,
- (xv) the utilization of unexpended balances of loans either in the reduction in any way of the debt of the local authority, or in carrying out any works which that authority is legally authorized to carry out, and the sanction necessary to such utilization,

and as to all other matters incidental to carrying this Act into effect

* * * * *

(3) All rules made under this Act shall be published * * * in the [Official Gazette], and on such publication, shall have effect as if enacted in this Act

5. If any money borrowed in accordance with the provisions of this Act or any interest or costs due in respect thereof, is, or are not repaid according to the conditions of the loan, the "[appropriate Government]", if itself the lender, may, and, if the "[appropriate Government]" is not the lender, shall, on the application of the lender, attach the funds on the security of which the loan was made. After such attachment, no person, except an officer appointed in his behalf by the "[appropriate Government]", shall in any way deal with the attached funds, but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interests and costs due in respect thereof and of all expenses caused by the attachment and subsequent proceedings

Remedy by attachment if loan not repaid

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law, but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of the liability in respect of which such attachment is made

Attachment not to defeat prior charges legally made

6. (1) Subject to the provisions of section 26 of the Indian Paper Currency Act, 1910,⁵ the local authority to which the loan is made shall be entitled to issue bills in the [Official Gazette] with the previous sanction of the Government

Issue of short term bills

— 1914 : Act IX. of 1920 : s. 2 and Sch. I

by means of the issue of bills or promissory notes payable within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under any law for the time being in force :

Provided that the amount of the bills or promissory notes which may be so issued, shall not exceed, when the amount of the other moneys for the time being borrowed by such local authority is taken into account, the total amount which such local authority is empowered by law to borrow.

(2) The ¹[~~appropriate Government~~] may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this section.

Loans not to
be effected
except under
this Act.

7. Except as provided by or under this Act, no local authority shall, for any purpose, borrow money upon, or otherwise charge its funds ; and any contract otherwise made for that purpose after the passing of this Act shall be void :

Provided that nothing herein contained shall be deemed—

(a) to preclude any local authority from exercising the borrowing powers conferred on it by any special enactment now or hereafter in force ; or

(b) to affect the power conferred on any local authority by any such enactment to charge its funds, by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.

Application
of Act to
loans existing
previous to
the fifth
September,
1871.

²[8. The remedy mentioned in section 5 shall be available for the recovery of any money lent by the Secretary of State in Council to any local authority before the fifth day of September, eighteen hundred and seventy-one, and the interest due on such money.]

9. [*Repeals.*] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

SCHEDULE I.

(See section 6.)

The Corporation of Calcutta.

The Commissioners for the Port of Calcutta.

The Commissioners for the Port of Chittagong.

The Municipal Corporation of the City of Bombay.

The Trustees of the Port of Bombay.

The Corporation of Madras.

The Trustees for the Port of Madras.

3* * * * *

¹ Subs. by the A. O. for " G. G. in C. "

² Subs. by the A. O. for the original section.

³ The entries relating to the Municipal Committee of Rangoon and the Commissioners for the Port of Rangoon, rep. by the A. O.

1915 : Act II.] *Sir Sassoon Jacob David Baronetcy*

The Municipality of Karachi

The Trustees of the Port of Karachi

The Trustees for the Improvement of the City of Bombay

The Trustees for the Improvement of the City of Calcutta

*SCHEDULE II [INACTIVITIES PRELIMINARY] Rep by the Repealing Act,
1927 (XII of 1927), s 2 and Sch*

THE SIR SASSOON JACOB DAVID BARONETCY ACT, 1915.

ACT No II OF 1915¹

[24th February 1915]

An Act for settling certain securities of the nominal value of Rupees Thirty Lacs and producing an annual income of about Rupees One Lac and Twenty Thousand, the property of Sir Sassoon Jacob David Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by His Majesty King George V, to hold to him and the heirs male of his body lawfully begotten and to be begotten and for other purposes connected therewith

WHEREAS by Letters Patent of His Majesty King George V by the Grace Preamble.
of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, dated at Westminster on or about the Twelfth day of December in the second year of His Reign and by warrant under the King's sign manual His said Majesty made known that He of His Special Grace, certain knowledge and mere motion, had erected, appointed and created His trusty and well beloved Sir Sassoon Jacob David of Bombay Knight to the dignity, state and degree of a Baronet, and him the said Sir Sassoon Jacob David, for His Majesty, His heirs and successors he did erect appoint, and create a Baronet, of the United Kingdom of Great Britain and Ireland by the said Letters Patent, to hold to him and the heirs male of his body lawfully begotten and to be begotten

And whereas the said Sir Sassoon Jacob David is desirous of settling in perpetuity the said securities on himself and the heirs male of his body who may succeed to the said Baronetcy so as to support the dignity of the title conferred on him and them as aforesaid upon the trusts and for the purposes hereinafter declared concerning the same

And whereas the said Sir Sassoon Jacob David is desirous that the Accountant General of Bombay, the Chief Secretary to the Government of Bombay and the Collector of Bombay, all for the time being and the said

¹ For Statement of Objects and Reasons, see Gazette of India 1915 Pt V, p 4
Proceedings in Council, Pt VI pp 15 and 25

Sir Sassoon Jacob David during his lifetime and every succeeding Baronet being a major shall be trustees of the aforesaid securities, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, in relation to the said securities.

And whereas it is expedient that the aforesaid purposes should be effected by an Act of the Council of the Governor General for making laws and regulations.

It is hereby enacted as follows :—

Short title.

1. This Act may be called " The Sir Sassoon Jacob David Baronetcy Act, 1915 ".

Incorporation of Trustees.

2. Douglas Dewar, Esquire, the Accountant-General of Bombay, the Honourable Mr. George Carmichael, the Chief Secretary to the Government of Bombay, and Arthur Henry Addenbrooke Simeox, Esquire, the Collector of Bombay, and their successors, the Accountant-General of Bombay, the Chief Secretary to the Government of Bombay, and the Collector of Bombay, all for the time being, and the said Sir Sassoon Jacob David, Baronet, and after his death the person for the time being holding the said Baronetcy being a major, shall be and they are hereby created a Corporation with perpetual succession and a common seal under the style and title of the " Trustees of the Sir Sassoon Jacob David Baronetcy " and the said Douglas Dewar, Esquire, the Honourable Mr. George Carmichael and Arthur Henry Addenbrooke Simeox, Esquire, and their respective successors in office and the said Sir Sassoon Jacob David, Baronet, and after his death the person for the time being holding the Baronetcy being a major (hereinafter styled " the Corporation ") shall be and they are hereby constituted as such Corporation, the Trustees for executing the powers and purposes of this Act.

Vesting and application of income of settled property.

3. Immediately from and after the passing of this Act the said securities being debentures of the Municipal Corporation of the City of Bombay of the nominal value of Rupees Fourteen Laes bearing interest at the rate of four per cent. per annum and bonds of the Trustees for the Improvement of the City of Bombay of the nominal value of Rupees Sixteen Laes bearing interest at the rate of four per cent. per annum, such debentures and bonds being of the aggregate nominal value of Rupees Thirty Laes and producing an annual income of about Rupees One Lac and Twenty Thousand, shall be assigned and transferred into the name of the Corporation, who shall hold the same upon the trust and for the purposes hereinafter expressed concerning the same (that is to say), upon trust to continue to hold the said securities until such time as the same shall be discharged by the Municipal Corporation of the City of Bombay or the Trustees for the Improvement of the City of Bombay, as the case may be, or shall be sold by the Corporation at the request in writing of the person who shall for the time being be in the enjoyment of the income of the said securities, and on such discharge or sale to invest the sum to be received on such occasion with all convenient despatch in or upon any stocks, funds or securities of, or the principal and interest of which is guaranteed by, the Government of the United Kingdom of Great

Britain and Ireland or the ¹[Central Government], and in like manner, as often as the same shall become necessary, to alter, vary and change at the like request the stocks, funds and securities for others of the same or like nature and which stocks, funds, securities, moneys and investments for the time being subject to the trusts of this Act are hereinafter called "the Trust Funds" and upon further trust from time to time to pay and apply the dividends, interest and annual income of the Trust Funds unto and for the benefit of the said Sir Sassoon Jacob David or the person who, as heir male of his body, shall for the time being have succeeded to, and be in the enjoyment of the title of, Baronet conferred by the said Letters Patent as aforesaid notwithstanding any rule of law or equity to the contrary, such payment to be made to the Baronet for the time being at the place where he may be residing at the time of such payment, and upon failure and in default of heirs male of the body of the said Sir Sassoon Jacob David to whom the same title and dignity of Baronet may descend, the Corporation shall stand possessed of one eighth part of the Trust Funds in trust to pay the income thereof to the widow of the last Baronet during her life or until her remarriage, as the case may be, and of the remaining seven eighth part of the Trust Funds and the income thereof and also the said one eighth part of the said Trust Funds after the death or remarriage of the widow of the last Baronet in trust for the next of kin of the last Baronet in such shares and proportions as he may by will provide, and in default of such appointment for the next of kin (except the widow) of the last Baronet for their absolute benefit according to the law of Intestate Succession for the time being applicable to them

4. The Corporation during the minority of any person for the time being entitled to and in the enjoyment of the said dignity of Baronet under limitations of the said Letters Patent shall pay and apply for and towards the maintenance, education and benefit of such Baronet, in each and every year during his minority as aforesaid so much only of the annual interest, dividends and income of the Trust Funds as the Corporation shall in their discretion think proper and shall from time to time invest the residue of the said annual interest, dividends and income of the Trust Funds in and upon the stock, funds and securities heretofore authorized and shall upon such Baronet attaining his majority pay over, transfer and assign to him or as he shall direct and for his absolute benefit the said investment and all accumulations thereof

Application
of income
during
minority

5. It shall be lawful for the said Sir Sassoon Jacob David and any person to whom the said title of Baronet shall from time to time descend when in the actual enjoyment of the said title by any deed or deeds, writing or writings with or without power of revocation, to be by him sealed and delivered in the presence of two or more credible witnesses (but subject and without prejudice to the annuity or annuities, if any, which shall be then subsisting and payable by virtue of any appointment made under and in pursuance of this present power) to appoint unto any woman whom he shall marry for her life or until her remarriage and for her jointure in bar of dower or other legal

Power to
charge settled
property for
jointure of
widow

or customary rights an annuity or yearly sum not exceeding the sum of Rupees fifteen thousand clear of all taxes, charges and deductions whatsoever to commence and take effect immediately after the decease of the person appointing the same and to the issuing and payable out of the dividends, interest and annual income of the Trust Funds and to be paid and payable in equal half-yearly payments, the first of the said half-yearly payments to be made at the expiration of six calendar months after the decease of the person who shall have appointed such annuity or yearly income. Provided that the payment of the said annuity to the widow of the person appointing the same shall be subject to the obligation on her part of maintaining and educating each and every minor child (except the Baronet for the time being) of such person during their respective minorities. After the death or remarriage of the said widow the said annuity shall be paid to the Baronet for the time being to be held by him (or if the Baronet for the time being shall be a minor by the Corporation) upon trust to maintain and educate each and every such child during their respective minorities and shall continue to be so held in trust until the youngest child shall attain majority. Provided further that notwithstanding any such appointment as aforesaid no widow of a Baronet shall become entitled to the sum so appointed if she shall also become entitled to the income of the one-eighth part of the Trust Funds on the failure of the male issue of the said Sir Sassoon Jacob David as provided in section 3.

Limitation
to amount of
jointure.

6. Provided always that the said interest, dividends and annual income of the Trust Funds shall not at one and the same time be subject to the payment of more than the yearly sum of Rupees thirty thousand for or in respect of any jointure or jointures which shall be made in pursuance of the power hereinbefore contained, so that if by virtue of or under the same power in said interest, dividends and annual income would, in case this present provision had not been inserted, be charged at any one time with a greater yearly sum for jointures in the whole than the yearly sum of Rupees thirty thousand the yearly sum which shall occasion such excess or such part thereof as shall occasion the same shall during the time of such excess abate and not be payable.

Limitation
of transfer
to life of
transferer.

7. Neither the said Sir Sassoon Jacob David nor any of the heirs male of his body in whose favour (subject to the two last preceding sections) the trusts are hereinbefore declared of the said interest, dividends and annual income of the Trust Funds, shall transfer, dispose of, charge or encumber the Trust Funds or any part thereof or the interest, dividends and annual income thereof or any part thereof for any greater or larger estate, interest or time, than during his natural life, nor shall any such person as aforesaid either alone or jointly with any other or others of them or with any other person or persons, whomsoever have any power to discontinue or bar any estate or interest hereby or herein created or declared in trust or for the benefit of any person or persons for whose benefit trusts are declared by this Act of the said interests, dividends and annual income of the Trust Funds or to prevent any such person or persons from succeeding to, holding or enjoy-

ing receiving or taking the same according to the true intent of the provisions hereinbefore contained nor shall the same or any of them be held by any Court of Law or Equity to have vested in any such person as aforesaid for any greater interest or estate than during his life and every attempt to make any assignment or assurance contrary to the intention of this Act shall be and is hereby declared and enacted to be void

8 If at any time or times hereafter the said Sir Sassoon Jacob David or any other person or persons shall be desirous of augmenting the funds and securities for the time being subject to the trusts of this Act and for that purpose and with that intent shall at his or her own expense transfer and deliver to the Corporation any stocks funds or securities of the nature authorized by section 3 then and as often as the same shall happen the said Corporation shall accept such stocks funds and securities and the same shall thenceforth be held by the Corporation upon the same trusts and for the same purpose as are declared by this Act with regard to the Trust Funds referred to in section 3 or upon such of them as shall then be subsisting and capable of taking effect PROVIDED ALWAYS that the total amount of the promissory notes bonds stocks funds and securities for the time being subject to the trusts of this Act shall at no time exceed Rupees ninety lacs

9 It shall be lawful for the Corporation out of the money which shall come to their hands by virtue of the trust and provisions of this Act to retain and reimburse themselves all costs damages and expenses which they shall or may sustain expend or disburse in or about the execution of the aforesaid powers trusts and provisions or in relation thereto

THE DELHI LAWS ACT 1915

ACT No VII OF 1915¹

[22nd March 1915]

An Act to declare the law in force in certain territory added to the Province of Delhi

WHEREAS by proclamation published in Notification No 981 C dated 22nd day of February 1915 the Governor General in Council with the sanction and approbation of the Secretary of State for India has been pleased to take under his immediate authority and management the territory mentioned in Schedule I which was formerly included within the United Provinces of Agra and Oudh and to include the said territory in the Province of Delhi with effect from the 1st April 1915

¹ For Statement of Objects and Reasons see Gazette of India 1915 Pt V p 19 and for Proceedings in Council see ibid 1915 Pt VI pp 110 and 310

And whereas it is expedient to declare the law in force in the said territory ;

It is hereby enacted as follows :—

Short title
and com-
mencement.

1. (1) This Act may be called the Delhi Laws Act, 1915 ;

Application
to added area
of law in
force in
existing
Province of
Delhi.

(2) It shall come into force on the first day of April, 1915.

Continuance
in added area
of certain
laws now in
force in the
United
Provinces.

2. All enactments (except the enactments specified in Schedule II) for the time being in force in the territory specified in Schedule A to the Delhi Laws Act, 1912, and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments shall be deemed to be in force in the territory specified in Schedule I in the same manner and subject to the same modifications as they are for the time being in the territory specified in the said Schedule to the said Act.

3. The enactments specified in Schedule III, and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under those enactments shall continue to be in force in the territory specified in Schedule I :

Provided that in the enactments so continued and in all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed thereunder, reference to a ¹[Provincial Government], the ²[Provincial Government] of the United Provinces of Agra and Oudh, or the Board of Revenue for the United Provinces shall be read as referring to the ³[Provincial Government] of Delhi ; references to a High Court or the High Court of Judicature of the North-Western Provinces as referring to the ⁴[High Court of Judicature at Lahore], and references to the official gazette for the United Provinces as referring to the ⁵[Official Gazette].

Provision for
facilitating
application
of certain
enactments.

4. For the purpose of facilitating the application to the territory mentioned in Schedule I of the enactments referred to in section 3, the powers conferred by sections 4 and 5 of the Delhi Laws Act, 1912, shall be exercisable in respect thereof.

Exclusion of
certain
enactments
from the
added area.

5. Save as provided in sections 2 and 3 no enactment which is in force in the United Provinces of Agra and Oudh or any part thereof shall continue to be in force in the territory specified in Schedule I.

Pending
proceedings.

6. Nothing in this Act shall affect any proceeding which at the commencement thereof is pending in respect of any of the territory mentioned in Schedule I or of anything arising in such territory and every such proceeding shall be continued as if this Act had not been passed :

Provided that the ¹[Provincial Government] may, by notification in the ⁵[Official Gazette], direct that any proceeding, criminal, civil or revenue, other than a proceeding pending before the High Court of Judicature for the North-Western Provinces, shall be transferred to, and disposed of by, the corresponding authority of the Delhi Province.

¹ Subs. by the A. O. for " L. G. "

² Subs. by the A. O. for " Lieutenant Governor ".

³ Subs. by the A. O. for " Chief Commissioner ".

⁴ Subs. by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and Sch. I, for " Chief Court of the Punjab ".

⁵ Subs. by the A. O. for " Gazette of India ".

7. [*Amendment of section 7 of Act XIII of 1912*] Rep by the Repealing Act, 1938 (I of 1938), s. 2 and Sch

8 This Act shall be construed with, and deemed to be part of the Delhi Construction of 1912 Laws Act, 1912

SCHEDULE I

TERRITORY ADDED TO THE PROVINCE OF DELHI

(See section 2)

Revenue estates of—

- 1 Subehpur
- 2 Jagatpur
- 3 Baglabad
- 4 Beharipur
- 5 Saadatpur Mahal Gujran
- 6 Saadatpur Musalmanan
- 7 Saadatpur Amad Delhi
- 8 Wazirabad
- 9 Khajuri Paramad
- 10 Khajuri Khas
- 11 Garhi Mendu
- 12 Timarpur
- 13 Chandrawal
- 14 Usmanpur
- 15 Ghonda patti Gujran Khadar
- 16 Ghonda patti Chauhan Khadar
- 17 Andhali
- 18 Kaithwara
- 19 Silampur Amad Delhi
- 20 Ghondli Khadar
- 21 Jatwara Khurd
- 22 Mubarakpur Reti
- 23 Shikarpur Khadar
- 24 Nagla Manchi
- 25 Shampur
- 26 Gharaunda Nimla Khadar
- 27 Nagli Raupur
- 28 Chilla Saraunda Khadar
- 29 Qarawalnagar urf Dharauti Kalan
- 30 Jivanpur Johripur
- 31 Mustafabad
- 32 Mirpur Turk
- 33 Ziauddinpur
- 34 Khanpur Dham
- 35 Maujpur
- 36 Ghonda patti Gujran Bangar

37. Ghonda patti Chauhan Bangar
38. Jafrabad.
39. Uldanpur.
40. Babarpur.
41. Sigdarpur.
42. Gokalpur.
43. Sabauli.
44. Mandauli.
45. Taharpur.
46. Jhilmila.
47. Chandavli *wf* Shadara.
48. Silampur Bangar.
49. Silampur Khadar.
50. Ghondli Bangar.
51. Kakarduman.
52. Khureji Khas.
53. Khureji Baramad.
54. Shakarpur Khas Bangar.
55. Mandavli Fazilpur.
56. Hasanpur Bhuapur.
57. Ghazipur.
58. Khichripur.
59. Gharaunda Nimka Bangar (Patparganj).
60. Shakarpur Baramad.
61. Kotla.
62. Chilla Sarauda Bangar.
63. Dalupura.
64. Kondli.
65. Gharauli.

SCHEDULE II.

ENACTMENTS IN FORCE IN THE DELHI PROVINCE WHICH WILL NOT BE IN FORCE
IN THE TERRITORY ADDED TO THAT PROVINCE.

(See section 2.)

Year.	Number.	Short title.	Remarks.
1	2	3	4
1887	XVI	<i>Acts of the Governor General of India in Council.</i>	
"	XVII	The Punjab Tenancy Act, 1887
1*	*	The Punjab Land Revenue Act, 1887
		* * * * *

¹ The entry relating to the Punjab Alienation of Land Act, 1900 (Punjab 13 of 1900) was rep. by the Repealing and Amending Act, 1927 (10 of 1927), s. 3 and Sch. II.

SCHEDULE II—*contd*

Year	Number	Short title	Remarks
1	2	3	4
<i>Punjab Acts</i>			
1900	II	The Punjab Land Preservation (Chas.) Act 1900	
1912	V	The Colonization of Government Lands (Punjab) Act 1912	
1913	I	The Punjab Pre-emption Act, 1913	
"	II	The Redemption of Mortgages (Punjab) Act 1913	

SCHEDULE III

ENACTMENTS IN FORCE IN THE UNITED PROVINCES OF AGRA AND OUDH WHICH WILL CONTINUE TO BE IN FORCE IN THE TERRITORY ADDED TO THE DELHI PROVINCE

(See section 3)

Year	Number	Short title	Remarks
1	2	3	4
<i>Acts of the Governor General of India in Council</i>			
1882	IV	The Transfer of Property Act 1882	
"	V	The Indian Easements Act 1882	
1891	VIII	An Act to extend the Indian Easements Act 1882 to certain areas in which that Act is not in force	
<i>United Provinces Acts</i>			
1901	II	The Agra Tenancy Act 1901	
"	III	The United Provinces Land Revenue Act 1901	
1904	I	The United Provinces General Clauses Act 1904	In so far as it applies to the Agra Tenancy Act, 1901 and the United Provinces Land Revenue Act 1901

THE SIR JAMSETJEE JEJEEBHOY BARONETCY ACT, 1915.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.—Commencement.
2. Repeal of Act XX of 1860.
3. The Commissioner for the Northern Division, the Accountant-General, and the Collector of Bombay to be a Corporation for execution of the Trusts of this Act.
4. Present Baronet to continue to bear, and all future Baronets to take, names of First Baronet.
5. Government Promissory Notes of a certain nominal value vested in Trustees. On trust to re-invest if paid off ; and to pay income to present Baronet for his life ; and after death of present Baronet to pay income to Baronet for time being ; with ultimate trust for Second Baronet, his executors, administrators and assigns.
6. Powers of investment.
7. Prohibition against varying investments without consent of person entitled to income.
8. Power to Baronet for the time being to purchase land to erect a Mansion House thereon ; and to purchase land with a house thereon, and to pull the house down, and erect another, or to enlarge, alter or add to house thereon.
9. Power to trustees to sell securities to produce funds to pay for land, etc. Proviso that total sum raised shall not exceed Rs. 2,25,000.
10. Power to Baronet for the time being to sell Mazagon Castle.
11. Power to Trustees to apply proceeds of sale of Mazagon Castle, not exceeding Rs. 2,75,000 in paying for land purchased and for erecting Mansion House thereon, etc.
12. Settlement of Mansion House, etc., in support of Baronetcy.
13. Saving of rights of persons interested in reversion or remainder in Mazagon Castle on sale thereof.
14. Declaration of Trusts as to surplus proceeds of sale of Mazagon Castle over and above the sum of Rs. 2,75,000.
15. Power to Trustees to invest the surplus annual interest and income of the Trust Fund and premises during the minority of any Baronet, etc.
16. Provision in case of refusal or discontinuance of names of First Baronet.
17. Baronet in possession may jointure.
18. Limit of aggregate of jointure payable contemporaneously.
19. Mansion House and hereditaments not to be subject to jointure.
20. Alienation prohibited during the Baronetcy.

SECTIONS

- 21 Power to augment the funds and securities subject to the Settlement provided that total amount of funds subject to the Settlement shall not exceed fifty lakhs
- 22 Provision as to insurance of Mazagon Castle and other houses or buildings purchased in lieu thereof
- 23 Directions for keeping Mazagon Castle and other houses or buildings purchased in lieu thereof, in repair
- 24 Power to Trustees to sell lands subject to Settlement
- 25 Directions as to how sale may be made
- 26 Direction as to investment of proceeds of sale of lands
- 27 Declaration of Trusts as to investments of proceeds of sale of lands
- 28 Power to Baronet for the time being to enter into arrangement with Government as to land revenue payable in respect of land purchased under section 8
- 29 Indemnity of Trustees
- 30 General saving clause

 ACT No X OF 1915¹

[8th September 1915]

An Act for repealing Act No XX of 1860 entitled An Act for settling Promissory Notes of the Government of India producing an annual income of one lakh of rupees and a Mansion House and hereditaments called Mazagon Castle in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased so as to recomprize and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body by Her present Majesty Queen Victoria, and for other purposes connected therewith and for resettling the said Promissory Notes Mansion House and hereditaments and for other purposes connected therewith

WHEREAS by Letters Patent of Her late Majesty Queen Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith dated at Westminster on or about the 6th day of August in the 21st year of Her said late Majesty's reign and by Warrant under Her said late Majesty's sign manual Her said late Majesty made known that she, of her special grace certain knowledge and mere motion had erected, appointed and created Sir Jamsetjee Jejeebhoy, then of Bombay, Knight, but then deceased (a man eminent for family inheritance estate and integrity of manner) to and into the dignity state and degree of a Baronet and him, the said Sir Jamsetjee Jejeebhoy for Her said late Majesty, her heirs, and successors she did erect appoint, constitute and create a Baronet, by the said

¹ For Statement of Objects and Reasons see Gazette of India 1915 Pt V, p 13 and for Proceedings in Council see ibid Pt VI pp 15 and 140

Letters Patent, to hold to him and the heirs male of his body lawfully begotten, and to be begotten for ever :

AND WHEREAS in fulfilment of an engagement in that behalf made with Her said late Majesty's Government, during the lifetime of the said Sir Jamsetjee Jejeebhoy, deceased, the said Sir Jamsetjee Jejeebhoy was desirous of settling in perpetuity such property on himself and the heirs male of his body who might succeed to the said Baronetcy, as should be adequate to support the dignity of the title conferred on him and them as aforesaid :

AND WHEREAS the said Sir Jamsetjee Jejeebhoy was seized of a Mansion House and hereditaments situate in the Island of Bombay called Mazagon Castle, and had an absolute estate of inheritance therein, and was desirous, in fulfilment of the aforesaid engagement, of settling Promissory Notes of the Government of India, producing an annual income of one lakh of rupees and the said Mansion House and hereditaments, to the uses upon the trusts, and for the purposes in the said Act No. XX of 1860 limited and declared, concerning the same respectively :

AND WHEREAS the said Sir Jamsetjee Jejeebhoy was also desirous that the heirs male of his body to whom the said title and dignity of Baronet should descend, should take and bear the names of "Jamsetjee Jejeebhoy," in lieu of any other name or names whatever which they respectively might bear at the time of such descent on them respectively ; and he was also desirous that the Revenue Commissioner for the Northern Division of the Presidency of Bombay, the Accountant-General, and the Sub-Treasurer at Bombay, for the time being should be Trustees for the aforesaid Promissory Notes, and be likewise the Trustees for carrying into execution the general purposes and powers of the said Act No. XX of 1860, with relation to the same securities, and also with relation to the same Mansion House and hereditaments :

AND WHEREAS the said Sir Jamsetjee Jejeebhoy departed this life on the 14th day of April, 1859, before the aforesaid engagement with Her said late Majesty's Government was carried out on his part, and by his Will, dated the 9th day of April, 1853, duly signed and executed by him, gave and devised the residue of his estate, houses, lands, securities, moneys and effects, to and amongst his sons Cursetjee Jamsetjee, Rustomjee Jamsetjee, and Sorabjee Jamsetjee, and appointed his wife Avaboye and his said three sons, the executrix and executors of his said Will ; and the said Will was duly proved by the said Cursetjee Jamsetjee, Rustomjee Jamsetjee and Sorabjee Jamsetjee alone :

AND WHEREAS on the death of the said Sir Jamsetjee Jejeebhoy, the said title or dignity of Baronet, created by Her Majesty's said Letters Patent, devolved on and became and was at the date of the passing of the said Act No. XX of 1860 vested in the said Cursetjee Jamsetjee, as the eldest son and heir male of the body of the said Sir Jamsetjee Jejeebhoy, deceased :

AND WHEREAS the said Cursetjee Jamsetjee, the Second Baronet, Rustomjee Jamsetjee, and Sorabjee Jamsetjee, as the sons, residuary legatees and Executors of the said Sir Jamsetjee Jejeebhoy, First Baronet, deceased, and the

said Ayaboye, being then the Dowager Lady Jejeebhoy, as Executrix of the said Sir Jamsetjee Jejeebhoy, First Baronet, deceased, in fulfilment of the engagement so as aforesaid entered into by the said Sir Jamsetjee Jejeebhoy, First Baronet, deceased, with Her said late Majesty's Government, were desirous of settling the said Government Promissory Notes and the said Mansion House and hereditaments so as aforesaid agreed to be settled by the said Sir Jamsetjee Jejeebhoy, First Baronet, deceased, for the purpose of supporting the dignity of the said Baronetcy, to the uses upon the Trusts, and for the purposes in the said Act No XX of 1860 limited and declared concerning the same respectively

AND WHEREAS the said Dowager Lady Jejeebhoy was desirous that the said Mansion House and hereditaments called Mazagon Castle, with their rights, members and appurtenances should be released, exonerated, and discharged from her right, or title (if any) to dower or thirds, and every other right, interest, or estate whatsoever which she, the said Dowager Lady Jejeebhoy, might have or claim to have in the said premises under any custom or law of the Parsees or otherwise howsoever

AND WHEREAS in order to give effect to the aforesaid purposes the said Act No XX of 1860 was passed, and by the said Act it was *inter alia* enacted that the Revenue Commissioner for the Northern Division of the Presidency of Bombay, the Accountant General, and the Sub Treasurer at Bombay should for the purposes of the said Act be a Corporation and that such Revenue Commissioner, Accountant General and Sub Treasurer should be, and they were thereby constituted as such Corporation the Trustees for executing the powers and purposes of the said Act and that all the powers by the said Act vested in such Revenue Commissioner Accountant General, and Sub Treasurer, as Trustees for the purposes of the said Act should be exercised by the persons for the time being acting as such Revenue Commissioner, Accountant General, and Sub Treasurer, and that immediately from and after the passing of the said Act Promissory Notes of the Government of India, producing an annual income of not less than one lakh of rupees should be transferred into the name of the said Corporation who should hold the same upon the trusts and for the purposes in the said Act expressed concerning the same (that was to say), upon the trusts in the said Act declared and set forth And it was also enacted that the said Mansion House and other hereditaments called Mazagon Castle, situate in the Island of Bombay, with their rights, members, and appurtenances of which the said first Baronet was seized to him and his heirs, should by force of the said Act from and immediately after the passing thereof, stand limited to the uses in the said Act set forth

AND WHEREAS Promissory Notes of the Government of India producing at that time an annual income of not less than one lakh of rupees, were, after the passing of the said Act, transferred into the name of the said Corporation, and the nominal amount of the Promissory Notes of the Government of India, now held by the said Corporation, is rupees twenty-two lakhs, fifty-four thousand and four hundred

AND WHEREAS the persons now constituting the said Corporation under or by virtue of the said Act are the Commissioner for the time being for the Northern Division of the Presidency of Bombay, the Accountant-General of Bombay, and the Collector of Bombay :

AND WHEREAS under the said Act XX of 1860 power was granted to the said Corporation to invest the Government Promissory Notes so to be transferred into the name of the said Corporation as aforesaid if the same should be discharged by the Government of India in or on any stocks, funds or securities of the Government of the United Kingdom of Great Britain and Ireland or of the Government of India, and in like manner, as often as the same should become necessary, to alter, vary, and change such stocks, funds, and securities for others of the same or alike nature :

AND WHEREAS Sir Jamsetjee Jejeebhoy, the Fifth and present Baronet, has represented to the Governor General in Council that it is desirable, not only in his own interest, but also in the interest of those who may succeed him in the Baronetcy, that more extensive powers of investment should be granted to the said Corporation :

AND WHEREAS more extensive powers of investment have been allowed to Trustees of Settlements which are governed by the Indian Trusts Act, 1882 :

II of 1882

AND WHEREAS it appears that certain of the powers last aforesaid may safely be granted to the said Corporation with a view to a higher rate of interest being obtained from the investment of the funds for the time being subject to the Trusts of a Settlement effected by this Act :

AND WHEREAS at the date when the said Act No. XX of 1860 was passed the locality in which the said Mansion House and hereditaments are situate was one of the principal residential localities of Bombay, and was healthy, but it has now ceased to be a healthy locality, and the upper classes of the inhabitants of Bombay have ceased to reside there :

AND WHEREAS the said Sir Jamsetjee Jejeebhoy has represented to the Governor General in Council that he has been advised by his medical adviser and by Sanitary Authorities whom he has consulted that it is necessary for him to change his place of residence and to live in a more healthy part of the Island of Bombay, and has also represented that, by reason of the present unhealthiness of the locality, future and succeeding Baronets, who may succeed to the said title of Sir Jamsetjee Jejeebhoy, will be unable to live in the said Mansion House, or on the said hereditaments, and therefore that it is both desirable and necessary for him to purchase a new residence in a healthy locality in the Island of Bombay, and that, to enable him to do this, it is necessary that power should be conferred to sell the said Mansion House and hereditaments, and also to sell a portion of the said securities and to purchase a new residence out of the proceeds of the sale thereof :

AND WHEREAS the said Corporation, being the Trustees for the time being for executing the powers and purposes of the said Act XX of 1860, have agreed to the above proposals being carried into effect :

AND WHEREAS all the possible Beneficiaries of the Trust under the said Act now living have agreed to the above proposals with the exception of those relating to the sale of the said Mansion House and hereditaments

AND WHEREAS all the possible Beneficiaries of the Trust under the said Act, with the exception of two possible Beneficiaries have agreed to the said proposals relating to the sale of the said Mansion House

AND WHEREAS the objections advanced by and on behalf of the said two possible Beneficiaries have been duly considered by the Governor General in Council and have been overruled

AND WHEREAS it is deemed expedient to confer the said powers and, for that purpose and for other divers good reasons, it is expedient to repeal the said Act XX of 1860, and to substitute the following Act in lieu thereof

It is hereby enacted as follows —

1. (1) This Act may be called 'The Sir Jamsetjee Jejeebhoy Baronetcy Short title Act, 1915' and

(2) It shall come into force at once

2. The said Act No XX of 1860 is hereby repealed and the said Provisory Notes of the [Central Government] of the nominal value of rupees twenty two lakhs fifty four thousand and four hundred shall henceforth cease to be vested in the Corporation created and constituted by the said Act No XX of 1860 and the Mansion House and other hereditaments called Mazagon Castle, situate in the Island of Bombay with their rights members and appurtenances of which the said First Baronet was seized to him and his heirs, shall, by force of this Act from and immediately after the passing of this Act either as to the whole or, as the case may be as to such parts thereof as shall not have been sold transferred and conveyed under the powers conferred by section 10, stand limited, until such time as the same shall have been sold, transferred, and conveyed under the powers conferred by the said section 10, to the uses following (that is to say) to the use of the present, that is to say, the Fifth Baronet, for and during the term of his natural life, and from and immediately after his decease to the use of the heirs male of the body of Sir Jamsetjee Jejeebhoy, First Baronet who may succeed to the title of Baronet conferred by the said Letters Patent as aforesaid but as to each one of the said heirs male to the use of such heir male during the term of his natural life only, and upon failure and default of heirs male of the body of the said Sir Jamsetjee Jejeebhoy, First Baronet to whom the said title and dignity of Baronet may descend as aforesaid to the use of the heirs, and assigns for ever of the said Sir Jamsetjee Jejeebhoy, the Second Baronet, which ultimate remainder or reversion it shall be lawful for the heirs and assigns of the said Second Baronet, at any time or times during the continuance of the said title and dignity of Baronet and until there shall be such a failure of heirs male of the body of the said First Baronet as aforesaid, to grant, convey, devise, and dispose of by Deed or Will, or by any other

Commence-
ment
Repeal of
Act XX of
1860

assurance or assurances by which such an estate in remainder or reversion is capable by law of being conveyed or disposed of.

The Commis-
sioner for the
Northern
Division, the
Accountant-
General, and
the Collector
of Bombay
to be a
Corporation
for execution
of the Trusts
of this Act.

3. The Commissioner for the time being for the Northern Division of the Presidency of Bombay, the Accountant-General for the time being of Bombay, and the Collector for the time being of Bombay, and the holders for the time being of those offices respectively, and likewise the holder or holders for the time being of any one or more office or offices which may hereafter be substituted by the ¹[Provincial Government] of Bombay for any one or more of the first mentioned offices, shall be, and they are hereby, created a Corporation with perpetual succession and a common Seal under the style and title of " Sir Jamsctjee Jejeebhoy Baronet's Trustees." and the said Corporation so hereby created (hereinafter styled " the Corporation ") are hereby constituted, as such Corporation, the Trustees for executing the powers and purposes of this Act.

Present
Baronet to
continue
to bear, and
all future
Baronets to
take, names
of First
Baronet.

4. The present Sir Jamsctjee Jejeebhoy, Fifth Baronet, shall continue to be called by the name of " Jamsctjee Jejeebhoy," and all other the heirs male of the body of Sir Jamsctjee Jejeebhoy, First Baronet, to whom the said title and dignity shall descend, pursuant to the limitation of the Letters Patent whereby the said dignity was granted, shall take upon themselves respectively the name of " Jamsctjee Jejeebhoy," in lieu and in the place of any other name or names whatsoever : and the present Baronet, and all such other heirs male of the said Sir Jamsctjee Jejeebhoy, First Baronet, severally and successively shall be called by the name of " Jamsctjee Jejeebhoy," and by that name shall name, style, and write themselves, respectively, upon all occasions whatsoever.

Government
Promis-sory
Notes of a
certain
nominal
value vested
in Trustees.

5. Immediately from and after the passing of this Act, the said Promis-sory Notes of the ²[Central Government], of the nominal value of rupees twenty-two lakhs, fifty-four thousand and four hundred, shall vest in the Corporation who shall hold the same upon the trusts, and for the purposes, and with the powers, hereinafter expressed of and concerning the same, that is to say :

On trust to
re-invest if
paid off ;

(a) Upon trust, if the same or any part thereof should be discharged by the ²[Central Government], to invest the sum or sums paid by the ²[Central Government], in discharge of the same or any part thereof, in or upon any stocks, funds, or securities in which they are by the provisions of this Act hereinafter authorised to invest the same, and in like manner, as often as the same shall become necessary, to alter, vary and change such stocks, funds, and securities for others of the same or a like nature ;

and to pay
income to
present
Baronet
for his
life ;

(b) and upon further trust, from time to time, to pay and apply the dividends, interest, and annual income of the said stocks, funds, and securities unto and for the benefit of the present Baronet,

¹ Subs. by the A. O. for " G. in C."

² Subs. by the A. O. for " G. of I."

that is to say, Sir Jamsetjee Jejeebhoy, Fifth Baronet, during his natural life,

- (c) and upon further trust, from and immediately after the decease of the said Sir Jamsetjee Jejeebhoy Fifth Baronet to pay and apply the said dividends, interest, and annual income unto and for the benefit of the person who as heir male of the body of the said Sir Jamsetjee Jejeebhoy, First Baronet, shall, for the time being have succeeded to, and be in the enjoyment of, the title of Baronet conferred by the said Letters Patent as aforesaid, notwithstanding any rule of Law or Equity to the contrary,
- (d) and upon further trust, upon failure and in default of heirs male of the body of the said Sir Jamsetjee Jejeebhoy, First Baronet, to whom the said title and dignity of Baronet may descend, to hold the *corpus* and also the income of the said Government Promissory Notes, stocks, funds and securities for the heirs and assigns for ever of Sir Jamsetjee Jejeebhoy the Second Baronet, which ultimate remainder or reversion it shall be lawful for the heirs and assigns of Sir Jamsetjee Jejeebhoy, the Second Baronet, at any time or times during the continuance of the said title and dignity of Baronet and until there shall be a failure of heirs male of the body of the said First Baronet as aforesaid to assign transfer, bequeath and dispose of by Deed or Will or other assurance or assurances

and after death of present Baronet to pay income to Baronet for time being,

with ultimate trust for Second Baronet, his executors, administrators and assigns

6. The Corporation shall have power to invest the funds which are subject to the trusts of the Settlement effected by this Act on the following securities and on no others — Powers of investment

- (a) in Promissory Notes debentures stock or other securities of the [Central Government] or of the United Kingdom of Great Britain and Ireland,
- (b) in bonds debentures or annuities charged by the Imperial Parliament, or by an Act of the Legislative Council of the Governor General of India, on the revenues of India,
- (c) in stock or debentures of or shares in Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council,
- (d) in debentures or other securities for moneys issued by, or on behalf of, any municipal body under the authority of any Act of a Legislature established in British India, or debentures issued by the Trustees for the Improvement of the City of Bombay under the City of Bombay Improvement Act, 1898, or debentures issued by the Trustees of the Port of Bombay under the Bombay Port Trust Act, 1879, or debentures issued by the Trustees of the Port of Karachi under the Local Authorities Loans Act 1914, or other law for the time being in force, or

¹ Subs by the A O for 'G of I

debentures issued by the Commissioners for the Port of Rangoon under the Local Authorities Loans Act, 1914, or the Rangoon Port Act, 1905 ;

- (e) on any other security expressly authorised by any rule which the High Court of Judicature at Bombay may, from time to time, prescribe as an investment for trust property consisting of money.

Prohibition
against
varying
investments
without
consent of
person
entitled to
income.

7. The Corporation shall not vary any investment of the funds, subject to the Settlement effected by this Act, without the consent in writing of the person for the time being entitled to the income of the said Funds.

8. The person for the time being entitled to, and in the enjoyment of, the title of Baronet conferred by the said Letters Patent, shall have power, with the written approval of the Corporation,—

Power to
Baronet for
the time
being to
purchase
land to erect
a Mansion
House
thereon ;

- (a) to purchase land in any part of the Island of Bombay for the purpose of erecting thereon a Mansion House and all necessary or suitable accessory buildings, and to erect thereon such Mansion House and accessory buildings ;

and to pur-
chase land
with a house
thereon and
to pull the
house down,
and erect
another, or
to enlarge,
alter or add
to house
thereon.

- (b) to purchase land in any part of the Island of Bombay with a dwelling house standing thereon, and either to pull down the said dwelling house and any other building which may be upon the land, and to erect upon the said land, in lieu thereof, a Mansion House, with all necessary or suitable accessory buildings, or to enlarge, alter, or add to the building or buildings which may be upon the land, when purchased, so as to convert the same into a Mansion House, with all necessary or suitable accessory buildings.

Power to
trustees to
sell securities
to produce
funds to pay
for land, etc.

9. The Corporation shall have power to sell a sufficient portion of the securities upon which the funds, which are subject to the Settlement effected by this Act, shall for the time being be invested to produce the sum which shall be required for the purpose of paying for any land which may be purchased by the person for the time being entitled to, and in the enjoyment of, the title of Baronet conferred by the said Letters Patent under the powers conferred by section 8, and for erecting thereon a Mansion House, with the necessary or suitable accessory buildings, or for paying for the purchase of any land with a house or other building standing thereon which may be purchased under the powers conferred as aforesaid, and for pulling down the said buildings, and erecting a Mansion House, with the necessary or suitable accessory buildings, in lieu thereof or for altering and adding to such buildings for the purpose of converting the same into a Mansion House, with the necessary or suitable accessory buildings, as the case may be :

Provided that the total sum raised by the Corporation under the power conferred upon them by this section for the sale of the said securities above-mentioned shall not exceed two lakhs and twenty-five thousand rupees

Proviso that total sum raised shall not exceed Rs 2,25,000
Power to Baronet for the time being to sell Mazagon Castle

10. The person for the time being entitled to, and in the enjoyment of, the title of Baronet conferred by the said Letters Patent, shall have power, with the written consent and approval of the Corporation, to sell, transfer, and convey freed and discharged from all uses and trusts created by this Act, the said Mansion House and other hereditaments, called Mazagon Castle, situate in the Island of Bombay, with their rights, members and appurtenances, and either in one parcel or in several parcels, and either at one time or from time to time, upon condition that the proceeds of sale thereof shall be paid by the purchaser thereof direct to the Corporation

11. The person for the time being entitled to, and in the enjoyment of, the title of Baronet, conferred by the said Letters Patent may, from time to time, request the Corporation, in writing, to pay, out of the proceeds of sale of the said Mansion House and other hereditaments, called Mazagon Castle, if and when sold, the purchase money of any land which may be purchased by the person for the time being entitled to, and in the enjoyment of, the said title of Baronet, under the powers conferred by section 8, and all costs, charges, and expenses of, and incidental to the purchase and acquisition of the same, and of the conveyance, and assurance of the same to the Corporation, and also to pay all costs and expenses of, and incidental to the erection thereon of, a Mansion House, with the necessary or suitable accessory buildings, and to pay the purchase money of any land, with a house, or other building, standing thereon, which may be purchased by the person for the time being entitled to, and in the enjoyment of the said title of Baronet, under the powers conferred by this Act, and all costs, charges and expenses of, and incidental to, the purchase and acquisition of the same, and of the conveyance, and assurance of the same to the Corporation, and also to pay all costs, and expenses of, and incidental to the pulling down of the said buildings, or any of them and of erecting a Mansion House, with the necessary or suitable accessory buildings, in lieu thereof, or of altering, and adding to, such buildings, for the purpose of converting the same into a Mansion House, with the necessary or suitable accessory buildings, as the case may be, and the Corporation shall, upon such request being made as aforesaid, make such payments out of the proceeds of sale of the said Mansion House and other hereditaments called Mazagon Castle

Power to Trustees to apply proceeds of sale of Mazagon Castle not exceeding Rs 2,75,000 in paying for land purchased and for erecting Mansion House thereon, etc

Provided that the total sum expended by the Corporation, under the powers conferred by this section, out of the proceeds of sale of the said Mansion House and other hereditaments, called Mazagon Castle, shall not exceed the sum of two lakhs and seventy-five thousand rupees

12. All lands and buildings which may be purchased by the person for the time being entitled to, and in the enjoyment of, the title of Baronet under the said Letters Patent under the powers conferred by section 8, with their rights, members and appurtenances shall be conveyed to the Corporation, and the Corporation shall hold the same, and also all buildings which may

Settlement of Mansion House, etc, in support of Baronetcy.

be erected thereon under the powers conferred by section 8, upon trust for Sir Jamsetjee Jejeebhoy, Fifth Baronet, for and during the term of his natural life, and from and immediately after his decease, upon trust for the heirs male of the body of Sir Jamsetjee Jejeebhoy, First Baronet, who may succeed to the title of Baronet conferred by the said Letters Patent, but as to each one of the said heirs male upon trust for such heir male during the term of his natural life only, and, upon failure and default of heirs male of the body of the said Sir Jamsetjee Jejeebhoy, First Baronet, to whom the said title and dignity of Baronet, may descend as aforesaid, upon trust for the heirs and assigns of Sir Jamsetjee Jejeebhoy, the Second Baronet, which ultimate remainder or reversion it shall be lawful for the heirs and assigns of the said Second Baronet at any time or times during the continuance of the said title and dignity of Baronet, and until there shall be such a failure of heirs male of the body of the said First Baronet to grant, convey, devise and dispose of by Deed or Will, or by any other assurance or assurances by which such an estate in remainder or reversion is capable by law of being conveyed or disposed of.

Saving of rights of persons interested in reversion or remainder in Mazagon Castle on sale thereof.

13. Any person or persons who shall have lawfully derived from the said Sir Jamsetjee Jejeebhoy, Second Baronet, any interest in remainder or reversion in the said Mansion House and other hereditaments, called Mazagon Castle, contingent upon such failure and default of heirs male of the body of Sir Jamsetjee Jejeebhoy, First Baronet, shall, upon such failure and default of heirs male of the body of Sir Jamsetjee Jejeebhoy, First Baronet, in the event of the said Mansion House and other hereditaments, called Mazagon Castle, having been sold in pursuance of the power in that behalf conferred by section 10 be deemed to have a corresponding interest in the funds for the time being subject to the trusts of the Settlement effected by this Act to the extent of the amount of the proceeds of sale of the said Mansion House and other hereditaments, called Mazagon Castle, paid to the said Corporation in pursuance of section 10.

Declaration of Trusts as to surplus proceeds of sale of Mazagon Castle over and above the sum of Rs. 2,75,000.

14. The Corporation shall hold so much, if any, of the proceeds of sale of the said Mansion House and other hereditaments, called Mazagon Castle, if and when sold, as shall exceed the sum of two lakhs and seventy-five thousand rupees, upon trust, to invest the same upon some one or more of the investments authorised by section 6, and shall hold the said investments, upon the same trusts, and for the same ends, intents and purposes, and with the same powers, as are, by this Act, declared of and concerning the funds which are subject to the Settlement effected by this Act.

Power to Trustees to invest the surplus annual interest and income of the Trust Fund and premises during the minority

15. The Corporation during the minority of any person for the time being entitled to, and in the enjoyment of, the title of Baronet under the limitations of the said Letters Patent, shall pay, and apply for and towards the maintenance, education, and benefit of such Baronet, in each and every year during his minority so much only of the annual interest, dividends and income of the said Trust Funds and premises as the Corporation shall, in their discretion, think proper; and shall, from time to time, invest the residue of the said annual dividends, interest, and income of the said Trust Funds

and premises in and upon some one or more of the investments authorised by this Act for the investment of the said Trust Funds and shall upon such Baronet attaining his majority pay over transfer and assign to him or as he shall direct and for his own absolute benefit the said investments and all accumulations thereof

16 Provided always that in case any person who for the time being shall be the heir male of the body of the said First Baronet to whom the said title of Baronet shall have descended shall for the space of one whole year after he shall by virtue of this Act become entitled to the dividends interest and income of the said stocks funds and securities or to the possession or receipts of the rents and profits of the said hereditaments or being then under age shall for the space of one whole year after he shall attain the age of twenty one years refuse or neglect to use the names of Jamsetjee Jejeebhoy as hereinbefore enacted or in case any such person having so used those names shall for the space of six calendar months consecutively during his natural life discontinue so to use such names then in any or either of the said cases the estate or interest of the person who shall so refuse or neglect to use or having used shall so discontinue to use the said names of 'Jamsetjee Jejeebhoy' shall during the remainder of his respective natural life be suspended and that during any and every such suspension the dividends interest and income of the said stocks funds and securities and the possession and actual occupation and also the rents and profits of the said hereditaments shall devolve and belong to the person who as heir male of the body of the First Baronet would have succeeded to and been in the enjoyment of the title of Baronet conferred by the said Letters Patent in case the persons so refusing or neglecting to use or discontinuing to use the said names of Jamsetjee Jejeebhoy had departed this life but if there should be no such heir male then to the person or persons who would be entitled to the same in case there had then been a total failure of issue male of the First Baronet entitled to the said dignity of Baronet

17 It shall be lawful for Sir Jamsetjee Jejeebhoy Fifth Baronet and for any person upon whom the said title of Baronet shall from time to time descend when in the actual enjoyment of the said title and who shall not refuse neglect or discontinue to use for the respective periods hereinbefore in that behalf mentioned the said names of Jamsetjee Jejeebhoy as hereinbefore enacted either before or after his marriage with any woman or women by any Deed or Deeds writing or writings with or without power of revocation to be by him sealed and delivered in the presence of two or more credible witnesses (but subject and without prejudice to any annuity or annuities if any which shall be then subsisting and payable by virtue of any appointment made under and in pursuance of this present power) to limit and appoint unto any woman or women whom he shall marry for her or their life or lives and for her or their jointure or jointures in bar of dower or other legal or customary rights any annuity or yearly sum not exceeding the sum of rupees ten thousand clear of all taxes charges and deductions whatsoever to commence and take effect immediately after the decease of the person

limiting or appointing the same, and to be issuing and payable out of the dividends, interest, and annual income, of the said stocks, funds, and securities, and to be paid and payable by equal half-yearly payments on the thirtieth day of June and the thirty-first day of December; the first of the said half-yearly payment to be made on the half-yearly day which shall first happen after the decease of the person who shall have appointed such annuity or yearly sum, provided always, that in case any person on whom such title shall descend, shall have refused or neglected to use the names of "Jamsetjee Jejeebhoy," or shall discontinue to use such names for six calendar months consecutively during his natural life, every such limitation and appointment, either previously or afterwards made by him, shall be and become inoperative and invalid; and no such annuity thereby created or appointed shall take effect or be payable or chargeable on the said stocks, funds, and securities, notwithstanding any such limitation or appointment.

Limit of
aggregate
of jointure
payable,
contempo-
raneously.

18. Provided always, that the said dividends, interest and annual income of the said stocks, funds, and securities shall not, at one and the same time, be subject to the payment of more than the yearly sum of rupees twenty thousand for, or in respect of, any jointure or jointures which shall be made in pursuance of the power hereinbefore contained, so that, if by virtue of or under the same power, the said dividends, interest and annual income would, in case this present provision had not been inserted, be charged at any one time with a greater yearly sum for jointures in the whole than the yearly sum of rupees twenty thousand, the yearly sum which shall occasion such excess, or such part thereof as shall occasion the same, shall, during the time of such excess, abate and not be payable.

Mansion
House and
heredita-
ments not
to be subject
to jointure.

19. The said Mansion House and hereditaments called Mazagon Castle, with their rights, members, and appurtenances, and any lands, houses, buildings and tenements which may be purchased or erected under the powers conferred by section 8, with their rights, members, and appurtenances, shall not be subject to dower of any Dowager Lady Jejeebhoy, or of the present or any future wife of Sir Jamsetjee Jejeebhoy, Fifth Baronet, or of any wife of any of the persons who may successively be entitled to the Baronetcy under the aforesaid limitations, or to any other right, interest, or estate whatsoever which any Dowager Lady Jejeebhoy or any such wife or wives as aforesaid may or might have or claim to have in the said Mansion House, lands, buildings and hereditaments, under any custom or law of the Parsees, or otherwise howsoever.

Alienation
prohibited
during the
Baronetcy.

20. So long as the said title and dignity of Baronet shall endure, and until there shall be a failure of the heirs male of the body of the First Baronet to whom the said title and dignity of Baronet might descend, pursuant to the limitations of the said Letters Patent, neither Sir Jamsetjee Jejeebhoy, Fifth Baronet, nor any of the heirs male of the body of Sir Jamsetjee Jejeebhoy, First Baronet, in whose favour trusts are hereinbefore declared of the dividends, and annual income of the said stocks, funds, and securities, or to whom the said Mansion House and hereditaments called Mazagon Castle and any lands, buildings, or other hereditaments, which may be purchased or erected

under the powers conferred by section 8 shall stand limited under this Act, shall transfer, dispose of, alien, convey, charge, or encumber the said stocks, funds and securities, or any part thereof, or the dividends, interest, and annual income thereof, or of any part thereof, or the said Mansion House or hereditaments, or any lands, buildings or other hereditaments, which may be purchased or erected under the power conferred by section 8 or any part thereof, for any greater or larger estate interest or time, than during his natural life, and for such portion thereof only as he shall continue to use the names of "Jamsetjee Jejeebhoy," nor shall have any power to discontinue or bar the estate of any person or persons for whose benefit trusts are declared by this Act of the dividends, interest, and annual income of the said stocks, funds, and securities or to or upon whom the said Mansion House and hereditaments, and any lands buildings and other hereditaments, which may be purchased or erected under the powers conferred by section 8 and the rents and profits thereof are, by this Act, limited to come or devolve in any manner whatsoever, either by default or otherwise, or to prevent any such person or persons from succeeding to, holding, or enjoying, receiving or taking, the same premises, according to the true intent of the provisions hereinbefore contained, nor shall the same premises or any of them be held, by any Court of Law or Equity, to have vested in any such person as afore said for any greater estate or interest than during his life, and only during such portion thereof as he shall continue to use the names of "Jamsetjee Jejeebhoy," and every attempt to make any conveyance, assignment, or assurance contrary to the intention of this Act shall be and is hereby declared and enacted to be void

21 If at any time or times hereafter the said Sir Jamsetjee Jejeebhoy, Fifth Baronet, or any other person or persons shall be desirous of augmenting the funds and securities for the time being subject to the trusts of this Act and for that purpose and with that intent shall at his or her own expenses transfer and deliver to the Corporation any stocks funds or securities of the kinds specified in section 6, then and as often as the same shall happen the Corporation may, with the previous consent of the [Provincial Government of Bombay] accept such stocks, funds and securities, and the same shall thenceforth be held by the Corporation upon the same trusts as those which are declared by this Act of and concerning the trust funds which are subject of the Settlement effected by this Act, or upon such of them as shall be then subsisting and capable of taking effect

Provided that the total amount of the corpus of the trust funds which shall be subject to the trusts of the Settlement effected by this Act shall at no time exceed fifty lakhs of rupees

22 The person for the time being entitled to, and in the enjoyment of, the title of Baronet shall, at his own expense, insure the said Mansion House and other hereditaments, called Mazagon Castle, and all buildings and offices accessory thereto, until such time as the same may be sold and the proceeds of sale thereof paid to the Corporation, in the name of the Corporation against

Power to augment the funds, and securities subject to the Settlement, provided that total amount of funds subject to the Settlement shall not exceed fifty lakhs
Provision as to insurance of Mazagon Castle, and other houses or buildings purchased in lieu thereof

loss or damage by fire, in such sum as the Corporation may deem adequate, and shall also, at his own expense, insure all houses and other buildings, which may be purchased or erected under the powers conferred by section 8, from the time when the same shall be conveyed to and become vested in the Corporation, against loss or damage by fire, in such sum as the Corporation may deem adequate, and in case any such person shall at any time neglect or refuse to insure the same in such amount or amounts, it shall be lawful for the Corporation to insure the same and to apply any portion of the income of the funds for the time being subject to the trusts of the Settlement effected by this Act to that purpose, and in case the hereditaments and premises so insured or any part thereof shall be destroyed or damaged by fire, the moneys received in respect of such insurance shall either be laid out under the directions of the Corporation in re-building or re-instating the hereditaments and premises so destroyed or damaged by fire, or, upon the application of the person for the time being entitled to, and in the enjoyment of, the said dignity of Baronet, and with the consent of the ¹[Provincial Government of Bombay] to be notified by a resolution of the Government of Bombay, may be laid out in the purchase of other hereditaments in the Island of Bombay suitable for the support of the dignity of the said Baronetcy and, in such last mentioned case, the hereditaments so purchased shall be conveyed to and vested in the Corporation, and the Corporation shall hold the same upon the same trusts and for the same ends, intents, and purposes, and with the same powers, as are declared and conferred by this Act of and concerning the hereditaments and premises which shall have been so destroyed or damaged by fire as aforesaid, or such of them as shall then be subsisting and capable of taking effect; and until such insurance moneys shall have been so laid out as aforesaid, the Corporation may invest the same or any part thereof in any of the securities specified in section 6.

Directions
for keeping
Mazagon
Castle, and
other houses
or buildings
purchased
in lieu
thereof,
in repair.

23. The person for the time being entitled to, and in the enjoyment of, the title of Baronet conferred by the said Letters Patent shall, at his own expense, keep in good repair, order, and condition, the said Mansion House and other hereditaments called Mazagon Castle and all offices and out-buildings accessory thereto, and likewise all houses and other buildings which may be purchased or erected under the powers conferred by section 8, and all alterations and additions thereto, and all offices, out-houses and other buildings accessory thereto, and, in case any person shall at any time neglect or refuse to keep the same or any part thereof in such good order and condition, it shall be lawful for the Corporation to cause the same to be kept in good order and condition, and to defray the expenses incidental thereto, out of the income of the funds for the time being subject to the trusts of the Settlement effected by this Act.

Power to
Trustees to
sell lands
subject to
Settlement.

24. The Corporation shall have power at any time, with the consent of the person entitled to, and in the enjoyment of, the title of Baronet conferred by the said Letters Patent, and of the ¹[Provincial Government of Bombay] to be notified by a resolution of the Government of Bombay to sell or exchange

¹ Subs. by the A. O. for "Governor of Bombay in Council".

for other lands or hereditaments in the Island of Bombay any lands or hereditaments which are subject to the trusts of the Settlement effected by this Act or any part thereof, and upon any such exchange, to give or receive any money for equality of exchange

Provided that the Corporation shall not sell the Mansion House, if any, or the buildings accessory thereto, which may be purchased, or erected under the powers conferred by this Act, without having first consulted all persons who may be interested in the said Mansion House, either by way of reversion, or otherwise, and who may have attained their respective ages of majority

Provided further that the foregoing proviso shall apply to the said Mansion House, and the buildings accessory thereto only, and shall not apply to any lands, hereditaments, or premises, other than the land upon which the said Mansion House and the buildings accessory thereto, may stand or be erected, which may be purchased under the powers conferred by this Act

25. Any sale which may be effected under the powers conferred by section 24 may be made either by public auction or private contract, and the Corporation may make any stipulations as to title, or evidence or commencement of title, or otherwise, in any conditions of sale or contract for sale or exchange, of the said hereditaments or any part thereof and may buy in or rescind or vary any contract for sale or exchange and re sell or re exchange, without being responsible for any loss occasioned thereby

Directions as to how sale may be made

26. The Corporation shall, with all convenient speed, invest all moneys which may be received by them upon any sale or exchange which shall be effected by them under the powers conferred by section 24 either in the purchase of any one or more of the securities specified in section 6, or in the purchase of other lands and hereditaments in the Island of Bombay suitable for the support of the dignity of the said title, provided that every such purchase of lands or hereditaments be made with the consent in writing of the person for the time being entitled to, and in the enjoyment of, the said title conferred by the said Letters Patent

Direction as to investment of proceeds of sale of lands

27. The Corporation shall hold all stocks, funds and securities which may be purchased by them in pursuance of the directions contained in section 26 upon the same trusts, and to the same ends, intents and purposes and with the same powers as are by this Act declared of and concerning the trust funds of the Settlement effected by this Act, and shall hold all lands and hereditaments may be purchased by them in pursuance of the directions contained in section 26 upon the same trusts and to the same ends, intents and purposes, and with the same powers as are declared by this Act of and concerning all lands and hereditaments which may be purchased under the powers conferred by section 8

Declaration of Trusts as to investments of proceeds of sale of lands

28. The person for the time being entitled to, and in the enjoyment of, the title of Baronet conferred by the said Letters Patent as aforesaid, shall have power with a view to the more advantageous sale of the land occupied by the said Mansion House and other hereditaments, called Mazagon Castle, in pursuance of the powers in that behalf conferred by section 10, and,

Power to Baronet for the time being to enter into arrangements

with Gov-
ernment as
to land-
revenue
payable in
respect of
land
purchased
under
section 8.

notwithstanding anything in this Act contained to the contrary, to enter into an arrangement with the Government of Bombay whereby, in consideration of the waiver in perpetuity by the Government of Bombay of their right to enhance the amount of the assessment to land-revenue for the time being payable in respect of the land occupied by the said Mansion House and other hereditaments, called Mazagon Castle, either the amount of the assessment to land-revenue payable in respect of any land which may be purchased in pursuance of the power in that behalf conferred by section 8, may be enhanced, or an assessment to land-revenue of any land so purchased, which at the time of the purchase thereof shall not be liable to the payment of land-revenue, may be imposed thereon.

Indemnity
of Trustees.

29. The Trustees for the time being acting in the execution of the trusts and powers hereby created and reposed in them respectively, and their successors, respectively, shall be charged and chargeable for such moneys only as he and they respectively shall actually receive by virtue of the trusts, powers and provisions of this Act, notwithstanding his, their, or any of their giving or signing, or joining in giving or signing any receipt or receipts, for the sake of conformity ; and he and they respectively shall not be answerable or accountable for any banker or broker, agent, or other person with whom or in whose hands any part of the said trust moneys shall or may be deposited or lodged for safe custody, or otherwise in the execution of any of the trusts, powers, and provisions hereinbefore created or contained ; and the Trustees for the time being acting in the execution of the trusts and powers hereby created, and reposed in them respectively, and their successors respectively, shall not be answerable or accountable for the insufficiency or deficiency of any security or securities, stocks, or funds, in or upon which the said trust moneys or any part thereof shall be placed out or invested, nor for any other misfortune, loss or damage which may happen in the execution of the aforesaid trusts, powers and provisions or in relation thereto ; and it shall be lawful for him and them respectively with or out of the money which shall come to his or their respective hands by virtue of the trusts and provisions of this Act, to retain and reimburse to himself and themselves respectively all costs, damages and expenses which he and they respectively shall or may sustain, expend, or disburse in or about the execution of the aforesaid powers, trusts, and provisions or in relation thereto.

General
saving clause.

30. Saving always to the King's Most Excellent Majesty, His heirs and successors, and to all and every other person and persons, bodies politic and corporate, and his, her and their respective heirs, successors, executors, and administrators and every of them (other than and except the devisees, heirs and assigns of the said Sir Jamsetjee Jejeebhoy, First Baronet), all such estate, right, title, interest, claim, and demand whatsoever of, in, to, out of, or upon the said Mansion House and hereditaments, called Mazagon Castle, and any lands, buildings or other hereditaments, which may be purchased or erected, under the powers conferred by section 8 or any part or parts thereof, as they, every, or any of them had before the passing of this Act and would, could, or might have had, held, or enjoyed in case this Act had not been passed.

THE NORTH-WEST FRONTIER CONSTABULARY ACT, 1915

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- 2 Definitions
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- 4 Constitution of Constabulary
- 5 Appointment and powers of superior officers
- 6 Appointment of subordinate officers and men
- 7 Superintendence, control and administration of Constabulary
- 8 More heinous offences
- 9 Less heinous offences
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- 11 Place of imprisonment, and liability to dismissal on imprisonment
- 12 Deduction from pay and allowances —
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- 14 Resignation and withdrawal from the Constabulary
- 15 General duties of members of the Constabulary
- 16 Powers and duties conferable and imposable on members of the Constabulary
- 17 Protection for acts of members of the Constabulary
- 18 Authority to confer exclusive powers of Sessions Court on Deputy Commissioner
- 19 Criminal powers conferred within British India to be exercisable beyond British India
- 20 Application of Act to other bodies enrolled for service on Frontier.
- 21 Power to make rules
- 22 [*Repealed*]

THE SCHEDULE — CONDITIONS OF SERVICE

ACT No XIII OF 1915 ¹

[1st October, 1915]

An Act to provide for the regulation of the Frontier Constabulary in the North West Frontier Province

WHEREAS it is expedient to provide for the regulation of the Frontier Constabulary in the North West Frontier Province, It is hereby enacted as follows —

1. (1) This Act may be called the North West Frontier Constabulary Act, 1915,

Short title
extent
application
and com-
mencement

¹ For Statement of Objects and Reasons see *Gazette of India* 1915 Pt V, p 56 for Proceedings in Council see *ibid* Pt VI pp 439 and 502

(2) It extends to the whole of the North-West Frontier Province, and applies also to every member of the Constabulary, wherever he may be serving; and

(3) It shall come into force on such day¹ as the ²[Central Government] may, by notification in the Official Gazette, appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “member of the Constabulary” means a person other than a person appointed by the ²[Central Government] who, at the commencement of this Act, is serving in the Frontier Constabulary, or who, after the commencement of this Act, has been appointed to the Frontier Constabulary under this Act and has signed a recruiting-roll on which the conditions of service contained in the Schedule are set forth :

Provided that every person who has for the space of six months been in the receipt of pay as a member of the Frontier Constabulary and been borne on the rolls of the Frontier Constabulary shall be deemed to be a member of the Constabulary, notwithstanding that he has not signed the said recruiting-roll :

(b) “Commandant” means a person appointed by the ²[Central Government] to be a Commandant of the Frontier Constabulary :

(c) “active service” means service against hostile tribes, raiders or other hostile persons, or persons co-operating with or assisting such tribes, raiders or hostile persons :

(d) the expressions “assault,” “criminal force,” “fraudulently,” “reason to believe” and “voluntarily causing hurt” have the meanings assigned to them, respectively, in the Indian Penal Code. XL

³[In this section references to appointments by the Central Government shall be construed as including references to appointments made before the ⁴commencement of Part III of the Government of India Act, 1935, by the Provincial Government.] 26 C. 2

Power to maintain Frontier Constabulary.

3. ⁵[There shall continue to be a force, maintained by the Central Government, and called] the Frontier Constabulary, for the better protection and administration of the external frontier of British India within the limits of or adjoining the North-West Frontier Province or any part thereof.

Constitution of Constabulary.

4. The Frontier Constabulary shall be constituted in such manner, and the members of the Constabulary shall receive such pay, pension, and other remuneration as shall from time to time ⁶ * * * be ordered by the ²[Central Government].

¹ The 15th October, 1915; see N.-W. F. P. Gazette, dated 29th November, 1915.

² Subs. by the A. O. for “L. G.”

³ Ins. by the A. O.

⁴ I. e. the 1st April, 1937.

⁵ Subs. by the A. O. for “The L. G. may continue to maintain a force, to be called”.

⁶ The words “with the previous sanction of the G. G. in C.” rep. by the A. O.

5 (1) The ¹[Central Government] may appoint any person to be Commandant and may appoint other persons to be District Constabulary Officers or Assistant Constabulary Officers of the Frontier Constabulary or of any part thereof constituted in any one or more districts

Appointment and powers of superior officers

(2) The Commandant and every other officer so appointed shall possess and may exercise such power and authority over the subordinate officers and members of the Constabulary at any time under his command as is provided by or under this Act

6 The appointment of all officers and men of the Frontier Constabulary other than those mentioned in sub section (1) of section 5 shall rest with the Commandant and the District Constabulary Officer who shall respectively exercise such powers in such manner as may be prescribed by rules made under this Act

Appointment of subordinate officers and men

7 (1) The superintendence of and control over the Frontier Constabulary shall vest in the ¹[Central Government] and the Frontier Constabulary shall be administered by the Commandant and the District Constabulary Officer in accordance with the provisions of this Act and of any rules made thereunder

Superintendence control and administration of Constabulary

(2) The District Constabulary Officer and the Constabulary of a district shall be under the general control and direction of the Deputy Commissioner of the district

(3) In exercising authority under sub section (2) the Deputy Commissioner shall be governed by such rules and orders as the ¹[Central Government] may make in this behalf

8 (1) Every member of the Constabulary who commits any of the following offences that is to say —

More heinous offences.

- (a) begins excites causes or conspires to cause or joins in any mutiny or being present at any mutiny does not use his utmost endeavours to suppress it or knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny or of any conspiracy against the State does not without delay give information thereof to his commanding or other superior officer or
- (b) uses or attempts to use criminal force to or commits an assault on his superior officer whether on or off duty knowing or having reason to believe him to be such or
- (c) shamefully abandons or delivers up any garrison fortress post or guard which is committed to his charge or which it is his duty to defend or
- (d) directly or indirectly holds correspondence with or assists or relieves any person in arms against the State or omits to discover immediately to his commanding or other superior officer any such correspondence coming to his knowledge or

(2) It extends to the whole of the North-West Frontier Province, and applies also to every member of the Constabulary, wherever he may be serving; and

(3) It shall come into force on such day¹ as the ²[Central Government] may, by notification in the Official Gazette, appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “member of the Constabulary” means a person other than a person appointed by the ²[Central Government] who, at the commencement of this Act, is serving in the Frontier Constabulary, or who, after the commencement of this Act, has been appointed to the Frontier Constabulary under this Act and has signed a recruiting-roll on which the conditions of service contained in the Schedule are set forth :

Provided that every person who has for the space of six months been in the receipt of pay as a member of the Frontier Constabulary and been borne on the rolls of the Frontier Constabulary shall be deemed to be a member of the Constabulary, notwithstanding that he has not signed the said recruiting-roll :

(b) “Commandant” means a person appointed by the ²[Central Government] to be a Commandant of the Frontier Constabulary :

(c) “active service” means service against hostile tribes, raiders or other hostile persons, or persons co-operating with or assisting such tribes, raiders or hostile persons :

(d) the expressions “assault,” “criminal force,” “fraudulently,” “reason to believe” and “voluntarily causing hurt” have the meanings assigned to them, respectively, in the Indian Penal Code. XL

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Power to
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3. ⁵[There shall continue to be a force, maintained by the Central Government, and called] the Frontier Constabulary, for the better protection and administration of the external frontier of British India within the limits of or adjoining the North-West Frontier Province or any part thereof.

Constitution
of Constabu-
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4. The Frontier Constabulary shall be constituted in such manner, and the members of the Constabulary shall receive such pay, pension, and other remuneration as shall from time to time ⁶ * * * be ordered by the ²[Central Government].

¹ The 15th October, 1915; see N.-W. F. P. Gazette, dated 29th November, 1915.

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5. (1) The [Central Government] may appoint any person to be Commandant and may appoint other persons to be District Constabulary Officers or Assistant Constabulary Officers of the Frontier Constabulary, or of any part thereof constituted in any one or more districts ^{Appointment of persons of superior rank}

(2) The Commandant and every other officer so appointed shall possess, and may exercise, such power and authority over the subordinate officers and members of the Constabulary at any time, under his command as is provided by or under this Act

6. The appointment of all officers and men of the Frontier Constabulary, other than those mentioned in sub-section (1) of section 5, shall rest with the Commandant and the District Constabulary Officer who shall respectively exercise such powers, in such manner as may be prescribed by rules made under this Act ^{Appointment of subordinate officers and men}

7. (1) The superintendence of and control over, the Frontier Constabulary shall vest in the [Central Government], and the Frontier Constabulary shall be administered by the Commandant and the District Constabulary Officer in accordance with the provisions of this Act and of any rules made thereunder ^{Superintendence, control and administration}

(2) The District Constabulary Officer and the Constabulary of a district shall be under the general control and direction of the Deputy Commissioner of the district

(3) In exercising authority under sub-section (2) the Deputy Commissioner shall be governed by such rules and orders as the [Central Government] may make in this behalf

8. (1) Every member of the Constabulary who commits any of the following offences, that is to say, — ^{Offences}

(a) begins, excites, causes or conspires to cause or joins in any mutiny, or being present at any mutiny does not use his utmost endeavours to suppress it or knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his commanding or other superior officer, or,

(b) uses, or attempts to use, criminal force to or commits an assault on, his superior officer whether on or off duty knowing or having reason to believe him to be such, or,

(c) shamefully abandons or delivers up any garrison, fortress, post or guard which is committed to his charge, or which it is his duty to defend, or,

(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State, or omits to discover immediately to his commanding or other superior officer any such correspondence coming to his knowledge; or,

(2) It extends to the whole of the North-West Frontier Province, and applies also to every member of the Constabulary, wherever he may be serving; and

(3) It shall come into force on such day¹ as the ²[Central Government] may, by notification in the Official Gazette, appoint in this behalf.

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(a) “member of the Constabulary” means a person other than a person appointed by the ²[Central Government] who, at the commencement of this Act, is serving in the Frontier Constabulary, or who, after the commencement of this Act, has been appointed to the Frontier Constabulary under this Act and has signed a recruiting-roll on which the conditions of service contained in the Schedule are set forth :

Provided that every person who has for the space of six months been in the receipt of pay as a member of the Frontier Constabulary and been borne on the rolls of the Frontier Constabulary shall be deemed to be a member of the Constabulary, notwithstanding that he has not signed the said recruiting-roll :

(b) “Commandant” means a person appointed by the ²[Central Government] to be a Commandant of the Frontier Constabulary :

(c) “active service” means service against hostile tribes, raiders or other hostile persons, or persons co-operating with or assisting such tribes, raiders or hostile persons :

(d) the expressions “assault,” “criminal force,” “fraudulently,” “reason to believe” and “voluntarily causing hurt” have the meanings assigned to them, respectively, in the Indian Penal Code. XL

³[In this section references to appointments by the Central Government shall be construed as including references to appointments made before the ⁴commencement of Part III of the Government of India Act, 1935, by the Provincial Government.] 26 C. 2

Power to maintain Frontier Constabulary.

3. ⁵[There shall continue to be a force, maintained by the Central Government, and called] the Frontier Constabulary, for the better protection and administration of the external frontier of British India within the limits of or adjoining the North-West Frontier Province or any part thereof.

Constitution of Constabulary.

4. The Frontier Constabulary shall be constituted in such manner, and the members of the Constabulary shall receive such pay, pension, and other remuneration as shall from time to time ⁶ * * * be ordered by the ²[Central Government].

¹ The 15th October, 1915; see N.-W. F. P. Gazette, dated 29th November, 1915.

² Subs. by the A. O. for “L. G.”

³ Ins. by the A. O.

⁴ I. e. the 1st April, 1937.

⁵ Subs. by the A. O. for “The L. G. may continue to maintain a force, to be called”.

⁶ The words “with the previous sanction of the G. G. in C.” rep. by the A. O.

5. (1) The ¹[Central Government] may appoint any person to be Commandant and may appoint other persons to be District Constabulary Officers or Assistant Constabulary Officers of the Frontier Constabulary, or of any part thereof constituted in any one or more districts

Appointment and powers of superior officers

(2) The Commandant and every other officer so appointed shall possess, and may exercise, such power and authority over the subordinate officers and members of the Constabulary at any time, under his command as is provided by or under this Act

6. The appointment of all officers and men of the Frontier Constabulary other than those mentioned in sub section (1) of section 5, shall rest with the Commandant and the District Constabulary Officer who shall respectively exercise such powers, in such manner as may be prescribed by rules made under this Act

Appointment of subordinate officers and men

7. (1) The superintendence of, and control over, the Frontier Constabulary shall vest in the ¹[Central Government], and the Frontier Constabulary shall be administered by the Commandant and the District Constabulary Officer in accordance with the provisions of this Act and of any rules made thereunder.

Superintendence, control and administration of Constabulary

(2) The District Constabulary Officer and the Constabulary of a district shall be under the general control and direction of the Deputy Commissioner of the district

(3) In exercising authority under sub section (2) the Deputy Commissioner shall be governed by such rules and orders as the ¹[Central Government] may make in this behalf

8. (1) Every member of the Constabulary who commits any of the following offences, that is to say --

More heinous offences

(a) begins, excites, causes or conspires to cause or joins in any mutiny, or being present at any mutiny, does not use his utmost endeavours to suppress it or knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny, or of any conspiracy against the State does not, without delay, give information thereof to his commanding or other superior officer, or,

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer whether on or off duty knowing or having reason to believe him to be such, or,

(c) shamefully abandons or delivers up any garrison, fortress, post or guard which is committed to his charge, or which it is his duty to defend, or,

(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State, or omits to discover immediately to his commanding or other superior officer any such correspondence coming to his knowledge; or,

who, while on active service,—

- (e) disobeys the lawful command of his superior officer ; or,
- (f) deserts the service ; or,
- (g) being a sentry, sleeps upon his post, or quits it without being regularly relieved or without leave ; or,
- (h) without authority, leaves his commanding officer, or his post or party, to go in search of plunder ; or,
- (i) quits his guard, picquet, party, or patrol without being regularly relieved or without leave ; or,
- (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to camp or quarters, or forces a safeguard or, without authority, breaks into any house or any other place for plunder, or plunders, destroys, or damages any property of any kind ; or,
- (k) intentionally causes or spreads a false alarm in action or in camp, garrison, or quarters ; or,
- (l) displays cowardice in the execution of his duty ;

shall be punishable with transportation for life or for a term of not less than seven years, or with imprisonment for a term which may extend to fourteen years, or with fine which may extend to three months' pay, or with fine to that extent in addition to such sentence of transportation or imprisonment, as the case may be, as may be passed upon him under this section.

(2) If any member of the Constabulary while on active service with a force beyond the limits of British India, is charged with committing any offence described in clause (c), clause (d), or clause (f), of sub-section (1), or the offence of culpable homicide amounting to murder, he may be summarily tried for such offence by the Political Officer accompanying the force, sitting with two other officers appointed by the Political Officer for this purpose.

(3) Every officer appointed under sub-section (2) shall be either—

- (a) a British officer, that is to say, a person holding a commission in His Majesty's land forces, or,
- (b) a civil officer, of gazetted rank, or,
- (c) a person appointed under section 5 :

Provided that, if circumstances permit, not less than one such officer shall be a Constabulary Officer appointed under section 5.

(4) If one or both of the officers sitting with the Political Officer concur with him in finding the accused guilty, and the Political Officer so directs, the accused shall be forthwith shot to death.

9. Every member of the Constabulary who commits any of the following offences, that is to say,—

- (a) is in state of intoxication when on, or after having been warned for, any duty, or on parade or on the line of march ; or,
- (b) strikes or attempts to force any sentry ; or,

- (c) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge, or, without proper authority, releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape, or,
- (d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by proper authority, or,
- (e) is grossly insubordinate or insolent to his superior officer in the execution of his office, or,
- (f) refuses to superintend or assist in the making of any field work or other work of any description ordered to be made either in quarters or in the field, or,
- (g) strikes or otherwise ill uses any member of the Constabulary subordinate to him in rank or position, or,
- (h) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person or has committed any not or trespass, fails, on proof of the truth of the complaint, to have due reparation made, as far as possible to the injured person or to report the case to the proper authority, or,
- (i) designedly or through neglect injures or loses or fraudulently disposes of, his arms, clothes, tools, equipments, ammunition, accoutrements or Frontier Constabulary necessities, or any such articles entrusted to him or belonging to any other person, or,
- (j) malingers or feigns or produces disease or infirmity in himself or intentionally delays his cure, or aggravates his disease or infirmity, or,
- (k) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person, or,
- (l) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the Constabulary, forthwith deliver up, or duly account for, all or any arms, ammunition, stores, accoutrements appointments or other property issued or supplied to him or in his custody or possession, as such member of the Constabulary, or,
- (m) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to [the Crown] or to any member of, or any person attached to, the Constabulary, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid, or,

(n) absents himself without leave, or without sufficient cause overstays leave granted to him ; or.

(o) is guilty of any act or omission which, though not specified in the Act, is prejudicial to good order and discipline ; or,

who, while not on active service,—

(p) disobeys the lawful command of his superior officer ; or

(q) deserts the service ; or.

(r) being a sentry, sleeps upon his post. or quits it without being regularly relieved or without leave ; or,

(s) quits his guard, picquet, party, or patrol without being regularly relieved or without leave ; or,

(t) plunders, destroys or damages any property of any kind ; or,

(u) displays cowardice in the execution of his duty ;

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both.

Minor
punishments.

10. (1) The Commandant or the District Constabulary Officer may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal, any of the following punishments to any member of the Constabulary who is, in the opinion of the Commandant or the District Constabulary Officer, as the case may be, guilty of disobedience, neglect of duty, or remissness in the discharge of any duty, or of rendering himself unfit to discharge his duty, or of other misconduct in his capacity as such member of the Constabulary, that is to say,—

(a) reduction in rank and emoluments ;

(b) fine to any amount not exceeding one month's pay and allowances ;

(c) confinement to quarters for a term not exceeding one month ;

(d) confinement in the quarter-guard for not more than twenty-eight days with or without punishment-drill or extra guard, fatigue or other duty ; and

(e) removal from any office of distinction or special emolument in the Constabulary.

(2) The Commandant or the District Constabulary Officer, or an officer not being below the rank of Subedar, commanding a separate detachment or an outpost, or in temporary command at the head-quarters of a district during the absence of the Commandant and the District Constabulary Officer may, without a formal trial, award to any member of the Constabulary who is subject to his authority any of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to call for a prosecution before a Criminal Court, that is to say,—

(a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance ; and,

(b) punishment-drill, or extra guard, fatigue or other duty, for not more than thirty days, with or without confinement to quarters.

(3) Any one of the punishments described in sub section (1) or sub section (2) may be awarded separately, or in combination with any one or more of the said punishments, respectively

11. (1) Every person sentenced under this Act to imprisonment may be dismissed from the Frontier Constabulary, and shall be further liable to forfeiture of pay and allowances due, as well as of medals and decorations received and the public money due to him

Place of imprisonment and liability to dismissal on imprisonment

(2) Every such person shall, if he is so dismissed be imprisoned in the nearest prison or such other prison as the [Central Government] may, by general or special order, direct, but, if he is not also dismissed from the Frontier Constabulary, he may, if the Court or the Commandant so directs, be confined in the quarter guard or such other place as the Court or the Commandant may consider suitable

12. The following penal deductions may be made from the pay and allowances of a member of the Constabulary, that is to say,—

Deductions from pay and allowances

(a) all pay and allowances for every day of absence either on desertion or without leave, and for every day of imprisonment awarded by a Criminal Court or of confinement awarded by an Officer exercising authority under section 10

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted,

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the proper Medical Officer attending on him at the hospital to have been caused by an offence under this Act committed by him,

(d) all pay and allowances ordered to be forfeited under section 10, and

(e) any sum required to make good such compensation for any expenses caused by him, or for any loss of, or damage or destruction done by him to, any arms, ammunition, equipment, clothing, instruments Frontier Constabulary necessities or decoration, or to any buildings or property, as may be awarded by the Commandant or the District Constabulary Officer

13. Whenever any weapon or part of a weapon or ammunition forming part of the equipment of a company or other similar unit is lost or stolen, the Commandant may, after making such inquiry as he thinks fit, impose a collective fine upon the subordinate officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft

Collective fines

14. No member of the Constabulary shall be at liberty to—

(a) resign his appointment during the term of his engagement, except before the expiration of the first three months of his service,

Resignation and withdrawal from the Constabulary

or,

(b) withdraw himself from all or any of the duties of his appointment,

without the permission in writing (to be previously obtained) of the Commandant or the District Constabulary Officer or other officer authorised by the Commandant to grant such permission.

General duties of members of the Constabulary.

15. (1) It shall be the duty of every member of the Constabulary promptly to obey and to execute all orders and warrants lawfully issued to him by any competent authority, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient grounds exist.

(2) Every member of the Constabulary shall be liable to serve without and beyond, as well as within, the limits of British India.

Powers and duties conferable and imposable on members of the Constabulary.

16. The ¹[Central Government] may, by general or special order, confer or impose upon any member of the Constabulary any of the powers or duties conferred or imposed on a Police-officer of any class or grade by any enactment for the time being in force.

Protection for acts of members of the Constabulary.

17. (1) In any suit or proceeding against any member of the Constabulary for any act done by him in pursuance of a warrant or order of a competent authority, it shall be lawful for him to plead that such act was done by him under the authority of such warrant or order.

(2) Such plea may be proved by the production of the warrant or order directing the act, and, if it is so proved, such member of the Constabulary shall thereupon be discharged from liability in respect of the act so done by him notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order.

(3) All suits and proceedings (whether civil or criminal) against any person which may lawfully be brought for anything done or intended to be done under the powers conferred by, or in pursuance of, any provision of this Act or the rules thereunder, shall be commenced within three months after the act complained of was committed and not otherwise; and notice in writing of such suit or proceeding and of the cause thereof shall be given to the defendant or his superior officer one month at least before the commencement of the suit or proceeding.

Authority to confer exclusive powers of Sessions Court on Deputy Commissioner.

18. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the ¹[Central Government] may declare that the Court of any Deputy Commissioner and no other Court, shall be deemed to be the Court of Session for the disposal of cases, or any class of cases, arising under this Act.

Criminal powers conferred within British India to be exercisable beyond British India.

19. Any person invested with any powers under the Code of Criminal Procedure, 1898, for the disposal of any case under this Act within the limits of British India shall, in relation to any case arising under this Act beyond such limits, have the same power and be subject to the same conditions as to appeal or otherwise as if such case had arisen within such limits.

¹ Subs. by the A. O. for "L. G."

20. The ¹[Central Government] ² * * * * may, by notification in the Official Gazette, apply ³ with such modifications (if any) as it may think fit, any of the provisions of this Act and the rules thereunder to the Border Militia or to any persons for the time being enrolled for similar service on the external frontier of British India

Application of Act to other bodies enrolled for service on frontier

21. The ¹[Central Government] may, by notification in the Official Gazette, make rules—

Power to make rules

- (a) regulating the functions and powers of the Deputy Commissioner, Commandant the District Constabulary Officer and the Assistant Constabulary Officer, respectively, under this Act,
- (b) regulating ⁴ * * * the classes and grades of, and the remuneration to be paid to the officers and men of, and the conditions of service in the Frontier Constabulary,
- (c) fixing the period of service for members of the Constabulary in any district or local area,
- (d) regulating the award of minor punishments to Constabulary Officers under the powers conferred by section 10, and providing for appeals from, or the revision of orders under that section, or the remission of fines imposed under that section, and the remission of deductions made under section 12,
- (e) regulating the several or collective liability of members of the Constabulary in the case of the loss or theft of weapons and ammunitions and
- (f) generally, for the purpose of carrying into effect the provisions of this Act

22 [Repeal] *Rep by the Repealing Act 1938 (I of 1938), s 2 and Sch*

THE SCHEDULE

CONDITIONS OF SERVICE

[See section 2, clause (a)]

AFTER you have served for such periods as the ¹[Central Government] may have prescribed in this behalf in the Frontier Constabulary maintained under the North West Frontier Constabulary Act, 1915, you may, at any time, when not on active service, apply for your discharge, through the officer to whom you may be subordinate, to the Commandant, or to the District Constabulary Officer of the district in which you may be serving and you will be granted your discharge after three months from the date of your

¹ Subs by the A O for I. G

² The words 'subject to the control of the G G in C' rep by the A O

³ This Act has been applied with modifications to the Frontier Corps, *et.*, the Kurram Militia, the Techi Scouts and the South Waziristan Scouts—see N W F P Chief Commissioner's Notification No 1085 M, dated the 27th March, 1925

⁴ The words 'subject to the provisions of s 4' rep by the A O

application, unless your discharge would cause the vacancies in the Frontier Constabulary to exceed one-tenth of the sanctioned strength, in which case you shall be bound to remain until this objection is waived by competent authority or removed. But when on active service you shall have no claim to a discharge, and you shall be bound to remain to do your duty until the necessity for retaining you in the Frontier Constabulary ceases, when you may make your application in the manner hereinbefore prescribed :

Provided that, if you wish to withdraw from the Frontier Constabulary, you may resign at any time before the expiration of the first three months of your service, but not afterwards until the completion of the period prescribed as aforesaid :

Provided, also, that the Commandant or the District Constabulary Officer may, if he thinks fit, allow you to resign at any time on your giving three months' notice of your wish to do so. .

*Signature of the member of the Constabulary in }
acknowledgment of the above having been } A. B.
read to him. }*

Signed in my presence after I had ascertained }
that A. B. understood the purport of } C. D.
what he signed. }

Commandant or, District
Constabulary Officer.

THE BENARES HINDU UNIVERSITY ACT, 1915.

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SCHEDULE I

FIRST STATUTES OF THE UNIVERSITY

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ACT No. XVI OF 1915.¹

[1st October, 1915.]

An Act to establish and incorporate a teaching and residential Hindu University at Benares.

WHEREAS it is expedient to establish and incorporate a teaching and residential Hindu University at Benares, and to dissolve the Hindu University Society, a Society registered under the Societies Registration Act, 1860, and to transfer to, and vest in, the said University all property and rights now vested in the said Society ; It is hereby enacted as follows :—

1. (1) This Act may be called the Benares Hindu University Act, 1915.

(2) It shall come into force on such ²date as the ³[Central Government] may, by notification in the ⁴[Official Gazette], direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “ College ” means any college or institution maintained or admitted to privileges by the University ;

(b) “ Council ” means the University Council ;

(c) “ Court ” means the University Court ;

(d) “ Faculty ” means a Faculty of the University ;

(e) “ Regulations ” means the Regulations of the University for the time being in force ;

(f) “ Senate ” means the Senate of the University ;

(g) “ Statutes ” means the Statutes of the University for the time being in force ; and

(h) “ University ” means the Benares Hindu University.

3. (1) The First Chancellor, Pro-Chancellor and Vice-Chancellor who shall be the persons specified in this behalf by a notification of the ³[Central Government] in the ⁴[Official Gazette], and the persons indicated in Schedule I as members of the Court and the Senate, and all persons who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership, shall be constituted a body corporate by the name of the Benares Hindu University.

(2) The University shall have perpetual succession and a common Seal, and shall sue, and be sued, by the name first aforesaid.

(3) The University shall be deemed to have been incorporated for the purposes, among others, of making provision for imparting education, literary, artistic and scientific, as well as agricultural, technical, commercial and professional, of furthering the prosecution of original research, and of giving

¹ For Statement of Objects and Reasons, see Gazette of India, 1915, Pt. V, p. 41 ; for Report of Select Committee, see *ibid.*, 1915, Pt. V, p. 61, and for Proceedings in Council, see *ibid.*, 1915, Pt. VI, pp. 291, 441 and 503.

² The 1st April, 1916, see Gen. R. and O., Vol. IV, p. 512.

³ Subs. by the A. O. for “ G. G. in C.”

⁴ Subs. by the A. O. for “ Gazette of India ”.

Short title
and com-
mencement.

Definition.

Incorporation.

instruction in Hindu theology and religion, and of promoting the study of literature, art, philosophy, history, medicine and science, and of imparting physical and moral training

4. (1) The University shall, subject to the Regulations, be open to persons of all classes, castes and creeds, but provision shall be made for religious instruction and examination in Hindu religion only

University open to all classes and creeds save as regards religious instruction

(2) The Court shall have power to make Statutes providing that instruction in Hindu religion shall be compulsory in the case of Hindu students, and shall also have power to make special arrangements for the religious instruction of Jain or Sikh students from funds provided for this purpose

5. The Governor-General of India for the time being shall be the Lord Rector of the University, and such persons, as may be specified in the Statutes, shall be the Patrons and Vice-Patrons thereof

Lord Rector, Patrons and Vice Patrons.

[(2) In the discharge of his functions as Lord Rector, the Governor-General shall exercise his individual judgment]

6. [() The Governor General, exercising his individual judgment, shall nominate³ such person as he thinks fit to be the Visitor of the University]

Visitor

(2) The Visitor shall have the right of inspecting the University and its Colleges generally, and for the purpose of seeing that the proceedings of the University are in conformity with this Act and the Statutes and Regulations The Visitor may, by order in writing, annul any such proceedings which is not in conformity with this Act and the Statutes and Regulations

Provided that, before making any such order, he shall call upon the University to show cause why such an order should not be made, and if any cause is shown within a reasonable time, shall consider the same

7. The following shall be the authorities and officers of the University —

Authorities and officers of the University.

I —The Chancellor,

II —⁴[The Pro Chancellors, of whom there shall be two]

III —The Vice Chancellor,

IV —The Pro-Vice Chancellor,

V —The Court

VI —The Council,

VII —The Senate,

VIII —The Syndicate,

⁵[VIII A —The Standing Finance Committee,]

IX —The Faculties and their Deans,

X —The Registrar,

XI —The Treasurer, and

XII —Such other authorities and officers as may be provided for by the Statutes

¹ Ins. by the A. O. 1930, No. 1, dated 1st March 1930.

Visitor of the University

O (29 of 1930), s. 2, for

³ Ins. *ibid*

Powers and duties of officers, terms of office and filling of casual vacancies.

8. Subject to the provisions of this Act, the powers and duties of the officers of the University, the term for which they shall hold office, and the filling up of casual vacancies in such offices, shall be provided for by the Statutes.

The Court.

9. (1) The Court shall be the supreme governing body of the University in administrative matters, and shall have power to review the acts of the Senate (save when the Senate has acted in accordance with powers conferred on it under this Act, the Statutes or the Regulations), and shall exercise all the powers of the University not otherwise provided for by this Act or the Statutes.

¹[(2) No person not being a Hindu shall become or be appointed a member of any Court other than the first Court unless he has been a member of the first Court.]

The Council.

10. (1) The Council shall be the executive body of the Court, and shall, in addition to *ex-officio* members, consist of not more than thirty elected members :

Provided that five members, other than *ex-officio* members, shall be members of the Senate elected by the Senate.

(2) The Council shall exercise such powers and perform such duties as may be vested in it by the Statutes.

The Senate.

11. (1) The Senate shall be the academic body of the University and, subject to the Act, the Statutes and Regulations, shall have entire charge of the organization of instruction in the University and the Colleges, the courses of study and the examination and discipline of students and the conferment of ordinary and honorary degrees.

(2) The Senate shall ordinarily consist of not less than fifty members.

The Syndicate.

12. (1) The Syndicate shall be the executive body of the Senate, and shall consist of ²[twenty] members :

Provided that ten at least of the members of the Syndicate, other than *ex-officio* members, shall be University Professors or Principals or Professors of Colleges.

(2) The Syndicate shall exercise such powers and perform such duties as may be vested in it by the Statutes.

Audit of accounts.

13. (1) The accounts of the University shall, once at least in every year and at intervals of not more than fifteen months, be audited by auditors appointed by the Court :

Provided that no person shall be appointed an auditor in the exercise of this power, unless he is qualified in accordance with the provisions of the Indian Companies Act, 1913, to audit accounts of companies under that Act. VII

¹ Subs. by the Benares Hindu University (Amendment) Act, 1922 (3 of 1922), s. 2, for the original sub-section.

² Subs. by the Benares Hindu University (Amendment) Act, 1930 (29 of 1930), s. 3, for "seventeen".

(2) The accounts, when audited, shall be published in the ¹[Official Gazette] and a copy of the accounts, together with the auditor's reports, shall be submitted to the Visitor

14. The University shall invest, and keep invested, in securities in which trust funds may be invested, in accordance with the provisions of the law relating to trusts in British India, a sum of fifty lakhs of rupees as a permanent endowment to meet the recurring charges of the University other than charges in respect of scholarships prizes and rewards

Permanent reserve to cover recurring charges

Provided that—

(1) any Government securities, as defined by the ²Indian Securities Act, 1886 which may be held by the University shall, for the purpose of this section, be reckoned at their face value, and

(2) the aforesaid sum of fifty lakhs shall be reduced by such sum as, at the commencement of this Act the ³[Central Government] shall, by order in writing, declare to be the total capitalised value for the purposes of this section—

(a) of all permanent recurring grants of money which have been made to the University by any Indian Prince or Chief, and

(b) of the total income accruing from immoveable property which has been transferred to the University

15 (1) The Central Hindu College Benares shall, from such ⁴date as Maintenance and admission to private colleges the ⁵[Central Government] may by notification in the ¹[Official Gazette], appoint in this behalf be deemed to be a College maintained by the University, and the University may found and maintain other colleges and institutions in Benares for the purposes of carrying out instruction and research

(2) With the approval of the Senate and the sanction of the Visitor, and subject to the Statutes and Regulations the University may admit colleges and institutions in Benares to such privileges of the University, subject to such conditions as it thinks fit

16 The degrees diplomas, certificates and other academic distinctions granted by the University shall be recognized by ⁶[any Government in British India] to the same extent and in the same manner as the corresponding degrees, diplomas certificates and other academic distinctions granted by any other University incorporated by an ⁷[Act of the Central Legislature]

Recognition of degrees

⁷[16A. The University shall constitute for the benefit of its officers, teachers and other servants such pension or provident fund as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes]

Pension or Provident Fund

¹ Subs. by the A. O. for Gazette of India

- (d) the discipline to be enforced in regard to the graduates and under graduates ,
- (e) the degrees, diplomas, certificates and other academic distinctions to be awarded by the University, the qualifications for the same, and the means to be taken relating to the granting and obtaining of the same ,
- (f) the withdrawal of degrees, diplomas, certificates and other academic distinctions ,
- (g) the removal from membership of the University of graduates and under graduates , and
- (h) all such other subjects as are required or authorised by the Act or Statutes to be prescribed by means of Regulations

(2) The first Regulations shall be framed as directed by the ¹[Central Government], and shall receive [its] previous approval

(3) The Senate, from time to time may make new or additional Regulations, or amend or repeal Regulations

(4) The Syndicate shall have power to draft and propose to the Senate Regulations to be made by the Senate, and it shall be the duty of the Senate to consider the same

(5) All new Regulations or additions to the Regulations or amendments or repeals to Regulations, shall require the previous approval of the Visitor, who may sanction, disallow or remit ²[them] for further consideration

Provided that no regulation making a change in the first Regulations as to the admission of students to the University shall be made without the previous sanction of the ³[Central Government]

19 (1) If, at any time, the ¹[Central Government] is of opinion that ^{Emergency powers of the Central Government} special reasons exist which make the removal of any member of the teaching staff desirable in the interest of the University or that as a special measure, the appointment of a certain examiner or examiners to report to ⁴[the Central Government] is desirable to maintain the standard of University examinations, or that the scale of staff of the University is inadequate or that in any other respect the affairs of the University are not managed in the furtherance of the objects and purposes of the University or in accordance with this Act and the Statutes and Regulations ⁵[the Central Government] may indicate to the Council any matter in regard to which ⁶[the Central Government] desires explanation and call upon that body to offer such explanation as it may desire to offer with any proposals which it may desire to make, within such time as ⁵[the Central Government] may prescribe

(2) If the Council fails to offer any explanation within the time prescribed or offers an explanation or makes proposals which in the opinion of the ¹[Central Government] is or are unsatisfactory the ¹[Central Government]

¹ Subs by the A O for G G in C

² Subs by the A O for Ins

³ Ins by the Repealing and Amending Act 1930 (8 of 1930), s 3 and Sch I

⁴ Subs by the A O for him

⁵ Subs by the A O for he

(Schedule I.—First Statutes of the University.)

may issue such instructions, as appear to ¹[it] to be necessary and desirable in the circumstances of the case, and the Court shall give effect to such instructions.

Dissolution
and transfer
of property
of the
Hindu
University
Society.

20. (1) From the commencement of this Act, the Hindu University Society shall be dissolved, and all property, moveable and immoveable, and all rights, powers and privileges of the Hindu University Society which, immediately before the commencement of this Act, belonged to, or were vested in, the said Society, shall vest in the University, and shall be applied to the objects and purposes for which the University is incorporated.

(2) From the commencement of this Act, all debts and liabilities of the said Society shall be transferred and attached to the University, and shall thereafter be discharged and satisfied by the University.

(3) Any will, deed or other document, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour of the Central Hindu College or the said Society shall, on the commencement of this Act, be construed as if the University were therein named, instead of the said College or Society.

SCHEDULE I.

FIRST STATUTES OF THE UNIVERSITY.

[See sections 3 and 17 (2).]

Definitions.

1. (1) In these Statutes—

“The Act” means the Benares Hindu University Act, 1915.

(2) All words and expressions used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

Membership
of the
University.

2. (1) The following persons shall be members of the University, namely:—

- (i) The officers of the University.
- (ii) The members of the University authorities.
- (iii) The members of the teaching staff.
- (iv) The graduates.
- (v) The under-graduates.

(2) Membership of the University shall continue so long only as one at least of the qualifications above enumerated shall continue to be possessed by the individual member.

Patrons
and Vice-
Patrons.

3. (1) The following persons shall be the Patrons of the University, namely:—

- ²[(i) all Governors and Chief Commissioners in British India ;]

¹ Subs. by the A. O. for “him.”

² Subs. by the A. O. for the original paragraph.

(Schedule I —First Statutes of the University)

(u) such Indian Princes and Chiefs as the Lord Rector may, of his own motion or on the recommendation of the Court, from time to time, appoint

(2) The Lord Rector may on his own motion or on the recommendation of the Court appoint such persons as he may think fit, to be Vice Patrons of the University

4 (1) The successors to the first Chancellor shall be elected by the Court The Chancellor

(2) The Chancellor shall hold office for three years

5. (1) The Chancellor shall by virtue of his office be the head of the University Powers of the Chancellor.

(2) The Chancellor shall, if present preside at the Convocation of the University for conferring degrees and at all other meetings of the Court

(3) The Chancellor may on the recommendation of the Senate appoint Rectors, being persons of eminent position or attainment

6. (1) The successors to the first Pro Chancellor shall be elected by the Court from among its own members The Pro Chancellor

(2) The Pro Chancellor shall hold office for one year

(3) Casual vacancies in the office of the Pro Chancellor shall be filled up by the Chancellor on the recommendation of the Council The person so appointed shall hold office till the next annual election

7. The Pro Chancellor may, in the absence of the Chancellor or pending a vacancy in the office of Chancellor exercise the functions of the Chancellor, except the conferring of degrees and preside at any meetings of the Court Powers of the Pro Chancellor.

8 (1) The successors to the first Vice Chancellor shall be elected by the Court from among its own members Such appointment shall be subject to approval by the Visitor The Vice Chancellor.

(2) The Vice Chancellor shall hold office for three years

(3) Casual vacancies in the office of Vice Chancellor shall be filled up by election by the Court subject to approval by the Visitor Until the election of a new Vice Chancellor, the Pro Vice Chancellor shall perform the duties of the Vice Chancellor

9. (1) The Vice Chancellor shall take rank in the University next to the Chancellor and the Pro Chancellor, and shall be *ex officio* Chairman of the Council, the Senate and the Syndicate He shall be the principal Executive and Academic Officer of the University, and shall, in the absence of the Chancellor, preside at the convocation and confer degrees Powers of the Vice-Chancellor

(2) It shall be the duty of the Vice Chancellor to see that the Act, the Statutes and the Regulations are faithfully observed

(3) The Vice Chancellor shall have power to convene meetings of the Court, the Council the Senate and the Syndicate, and to perform all such acts as may be necessary to carry out or further the provisions of the Act, the Statutes and the Regulations

(4) If any emergency arises which, in the opinion of the Vice Chancellor requires that immediate action should be taken, the Vice Chancellor shall

(Schedule I.—First Statutes of the University.)

take such action as he deems necessary, and shall report the fact to the authority which in the ordinary course would have dealt with the matter.

The Pro-
Vice-
Chancellor.

10. (1) The Pro-Vice-Chancellor shall be elected by the Court. The appointment shall be subject to approval by the Visitor.

(2) He shall hold office for such period and under such conditions as shall, from time to time, be determined by the Court.

(3) Casual vacancies in the office of the Pro-Vice-Chancellor shall be filled up by the Vice-Chancellor with the approval of the Chancellor and the Visitor. The person so appointed shall hold office till the next meeting of the Court.

Powers of
the Pro-
Vice-
Chancellor.

11. The Pro-Vice-Chancellor shall be *ex-officio* Secretary of the Court and the Council. He shall be the executive assistant of the Vice-Chancellor in all matters affecting the discipline of the graduates and under-graduates.

The
Registrar.

12. (1) The Registrar shall be a whole-time paid officer of the University, and shall be appointed by the Council. He shall be *ex-officio* Secretary of the Senate and the Syndicate. He shall hold office for a term of five years.

(2) The Registrar may be a member of the Senate, but shall not be a member of the Syndicate.

(3) It shall be the duty of the Registrar,—

(a) to be the custodian of the records, common seal and such other property of the University as the Syndicate shall commit to his charge ;

(b) to act as Secretary to the Senate and the Syndicate, and to attend, as far as possible, all meetings of the Senate, Syndicate, Faculties, and any Committees appointed by the Senate, the Syndicate, or the Faculties, and to keep minutes thereof ;

(c) to conduct the official correspondence of the Senate and the Syndicate ;

(d) to issue all notices convening meetings of the Senate, Syndicate, Faculties, Boards of Studies, Boards of Examiners, and of any Committees appointed by the Senate, the Syndicate, the Faculties or any of the Boards ;

(e) to arrange for, and superintend, the examinations of the University at Benares ; and

(f) to perform such other work as may, from time to time, be prescribed by the Syndicate.

The
Treasurer.

13. (1) The Treasurer shall be appointed by the Court. He shall hold office for the term of one year.

(2) Casual vacancies in the office of Treasurer shall be filled up by election by the Council. The person so appointed shall hold office for the unexpired period of office of the person in whose place he is elected.

(3) The receipt of the Treasurer for any money payable to the University shall be sufficient discharge for the same.

(Schedule I —First Statutes of the University)

14. (1) Subject to the provisions of the Act, and save as hereinafter provided in this Statute, the Court shall consist of the following persons, namely —

Class I —Ex officio Members

The Chancellor, the Pro Chancellor, the Vice Chancellor and the Pro-Vice Chancellor for the time being

Class II —Donors and their representatives

- (a) Every Indian Prince or Chief, contributing a donation of three lakhs of rupees or upwards or transferring property of the like value shall be a life member from the date of the receipt of the donation or of the transfer, and after his decease, his successor for the time being holding his position as such Prince or Chief shall be a life member
- (b) Every person contributing to the University a donation of one lakh of rupees or upwards, or transferring property of the like value, shall be a life member from the date of the receipt of the donation or of the transfer
- (c) Every person contributing to the University a donation of Rs 10,000 or upwards, or transferring property of the like value, shall be a member for a period of ten years from the date of the receipt of his donation or of the transfer
- (d) Every person who is a life member in virtue of clause (a) may, from time to time, nominate one member. The member so nominated shall continue in office for such period as the nominator may specify to the Registrar, provided that his membership shall determine on the death of the nominator
- (e) Every person who is a life member in virtue of clause (b) may, by notice in writing to the Registrar, nominate one member to hold office for a period of five years
- (f) Every donor who makes a bequest of Rs 10,000 or upwards, or of property of the like value may, by or under his will, nominate one person who shall be a member for a period of five years from the receipt of the bequest
- (g) Every Indian Prince or Chief who makes a permanent annual grant of money to the University shall, subject to the provisions of clause (g), have the same rights as to membership of, and representation on, the Court as if he had been a donor of such sum as represents the capital value ascertained at a rate of interest of $3\frac{1}{2}$ per cent of such annual grant
- (h) Every other grantor to the University of any annual grant of money, the payment of which is secured by mortgage of immoveable property affording sufficient security for such grant within the provisions of the *Explanation* to section 66 of the Transfer of Property Act, 1882, and effected by duly executed

*Schedule I.—First Statutes of the University.)**(Schedule I.)*

ent in a form approved by the Council, shall, subject to the provisions of clause (j), have the same rights as to membership to the Court as if he had been a donor of a sum calculated in the manner prescribed in clause (f).

- (g). The amount of donations specified in clauses (a), (b), (c), (f) and (i) may, for the purpose of qualifying the donors in Class III (b), be made up partly of money or of property, annual grant is not fully paid up or falls in arrears, the (j) When an a shall not be entitled to exercise any of the privileges granted on him by any of the foregoing clauses of this Statute, conferment until the said arrears are paid up, unless a

Class III.—Elected Members.

is to be elected by the registered graduates of the University

- (a) Ten persons such date as the Court may fix.
 (b) Thirty persons to be elected by registered donors of Rs. 500 or upwards, that, whenever the number of such donors falls below fifty, there shall be no election until the number of such donors attains or exceeds fifty.
 (c) Ten persons representatives of Hindu religion and Sanskrit learning
 (d) Fifteen persons to be elected by the Court to represent Jain and Sikh communities.
 (e) Ten persons to be elected by the Court to represent the learned professors, not exceeding twenty in number, as may be elected by the Court.
 (f) Ten persons to be elected by the Court to represent the learned professors, not exceeding twenty in number, as may be elected by the Court.
 (g) Such other persons as may be elected; provisions of this Statute shall, as far as may be, be

(2) The foregoing Court :
 applicable to the first the case of the first Court, the ten persons specified in the group (c) of C¹ [Central Government].
 Provided that, in Class III shall be appointed by the Vice-Chancellor, with the approval of the electoral body, entitled to elect a member or members,

(3) When any of the time prescribed by the Court, the Court may appoint fails to do so within of the class from which such electoral body was entitled any qualified person to elect. otherwise expressly provided, members shall hold office

(4) Save when
 for five years :

¹ Subs. by the A. O. for "G. G. in C."

(Schedule I —First Statutes of the University)

Provided that, as nearly as may be one fifth of the total number of the members of the first Court in each of the groups of Class III shall retire by ballot at the end of each year for the first four years

(5) All casual vacancies among the appointed or elected members shall be filled, as soon as conveniently may be by the person or body who appointed or elected the member whose place has become vacant and the person appointed or elected to a casual vacancy shall be a member for the residue of the term for which the person in whose place he is appointed or elected was a member

15 The Court shall exercise control over the Senate through the Council and not otherwise and over the Faculties through the Council and Senate and not otherwise, and over the Council by means of Statutes and Resolutions passed at a meeting of the Court and not otherwise Exercise of control by the Court

16. (1) As soon as may be after the commencement of the Act the first Court shall assemble at such place and time as the Chancellor may direct in order to make the necessary appointments and elections for the purpose of the Act and Statutes Meetings of the Court

(2) An annual meeting of the Court shall be held during the month of October in each year unless some other month be fixed by Resolution at a previous annual general meeting on such day and at such hour as shall be appointed by the Council And at such yearly meeting a report of the proceedings of the Council and of the University together with a statement of the receipts and expenditure and the balance sheet as audited shall be presented by the Council to such meeting, and any vacancies among the officers of the University or among the members of the Court or Council which ought to be filled up by the Court shall be filled up

(3) A copy of the statement of receipts and expenditure and of the balance sheet referred to in clause (2) shall be sent to every member of the Court at least seven days before the date of the annual meeting and shall be open to the inspection of all members of the Court and Senate at the office of the University during the year following such annual meeting at such reasonable hours and under such conditions as the Council may determine

(4) Twenty members of the Court shall form a quorum

(5) Special general meetings of the Court may be convened by the Council at any time

17. (1) The Council shall consist of the following persons, namely — The Council.

(i) The Vice Chancellor and the Pro Vice Chancellor for the time being

(ii) Not more than thirty elected members, of whom five shall be members of the Senate elected by the Senate, and the remainder members of the Court elected by the Court

(2) Not less than five of the members to be elected by the Court shall be residents of places outside the United Provinces of Agra and Oudh

(3) At the first election of members of the Council by the Court, it shall

(Schedule I.—First Statutes of the University.)

proceed in the first place to elect twenty members. The Court shall, as soon as the result of the election is declared, proceed to determine the province, or provinces or States, from among the residents of which the remaining five members are to be elected, and assign to each province or State the number of member or members to be elected.

(4) At each subsequent election, as nearly as may be, four-fifths of the vacancies shall be first filled up. The remaining one-fifth of the vacancies shall then be filled up to secure representation of provinces and States, on the same lines *mutatis mutandis* as provided in sub-section (3).

(5) The elected members of the Council shall hold office for the term of three years :

Provided that, at the first annual meeting of the Court, and at the second annual meeting of the Court, as nearly as may be, one-third of the first elected members shall retire by ballot.

(6) All casual vacancies among elected members may be filled up by the body which elected the member whose place has become vacant.

(7) Seven members of the Council shall form a quorum.

owers of
the Council.
18. (1) The Council shall, subject to the control of the Court, have the management and administration of the whole revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the Act, the Statutes and any Regulations made in pursuance thereof, the Council shall, in addition to all other powers vested in it, have the following powers, namely :—

- (i) To appoint, from time to time, Principals of Colleges and such University Professors, Professors, Assistant Professors, Readers, Lecturers and other members of the teaching staff, as may be necessary, on the recommendation of the Board of Appointments.
- (ii) In the case of other appointments, to delegate, subject to the general control of the Council, the power of appointment to such authority or authorities as the Council may, from time to time, by Resolution, either generally or specially direct.
- (iii) To manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University and, for that purpose, to appoint such agents as it may think fit.
- (iv) To invest any moneys belonging to the University, including any unapplied income in such stocks, funds, shares, or securities, as it shall, from time to time, think fit, or in the purchase of immoveable property in India, with the like power of varying such investments from time to time.
- (v) To transfer or accept transfers of any moveable or immoveable property on behalf of the University.

(Schedule I —First Statutes of the University)

- (vi) To provide the buildings, premises, furniture, and apparatus, and other means needed for carrying on the work of the University
- (vii) To enter into, vary, carry out, and cancel contracts on behalf of the University
- (viii) To entertain, adjudicate upon, and, if thought fit, redress and grievances of the officers of the University, the Professors, the Teaching Staff, the graduates, under graduates and the University servants, who may, for any reason feel aggrieved otherwise than by an act of the Court

Provided that nothing in this provision shall be deemed to confer on the Council any power to interfere in any matter of discipline in regard to graduates and under graduates

- (ix) To maintain a register of donors to the University.
- (x) To select a Seal for the University, and provide for the custody and use of the Seal

19 (1) The Senate shall, save as hereinafter provided in this Statute, the members ordinarily consist of not less than fifty members, of whom not less than three fourths shall be Hindus, and shall include the following persons namely —

Class I — Ex officio Members

- (a) The Chancellor, the Pro Chancellor, the Vice Chancellor and the Pro Vice Chancellor for the time being
- (b) The University Professors
- (c) The Principals or heads of Colleges

Class II — Elector Members.

- (a) Five members to be elected by the Court.
- (b) Five members to be elected by the registered graduates of the University from such date as the Court may fix
- (c) Five representatives of Hindu religion and Sanskrit learning to be elected by the Senate
- (d) Ten representatives to be elected by the Senate from persons engaged in the teaching work of the University or its Colleges.
- (e) Should the Vice Chancellor declare that there is a deficiency in the number of members required in any faculty or faculties, then five or less persons elected by the Senate, eminent in the subject or subjects of that faculty or those Faculties

(Schedule I.—First Statutes of the University.)

of (6) Technology, (7) Commerce, (8) Medicine and Surgery, (9) Agriculture, and other Faculties.

(2) The Senate shall annually assign its members to the different Faculties.

(3) The method of assignment of members to the Faculties, the meetings of the Faculties, and their power of co-opting additional members shall be provided for by Regulations :

Provided that the members assigned to the Faculty of Theology shall all be Hindus.

Powers of
Faculties.

24. (1) The Faculties shall have such powers, and shall perform such duties, as may be assigned to them by the Statutes and the Regulations, and shall, from time to time, appoint such and so many Boards of Studies, in different branches of knowledge as may be prescribed by the Regulations. They shall also consider and make such recommendations to the Senate on any question pertaining to their respective sphere of work as may appear to them necessary, or on any matter referred to them by the Senate.

(2) Five members, in the case of the Faculty of Arts, and three members, in the case of the other Faculties, shall constitute a quorum.

Convoca-
tions.

25. Convocations of the University for the conferring of degrees, or for other purposes, shall be held in a manner to be prescribed by Regulations.

Committees.

26. The Court, Council, Senate, Syndicate and the Faculties may, from time to time, appoint such and so many standing and special Committees or Boards as may seem to them fit, and may, if they think fit, place on them persons who are not members of the appointing bodies. Such Committees may deal with any subject delegated to them, subject to subsequent confirmation by the appointing body.

Board of
Appoint-
ments.

27. (1) The Board of Appointments shall consist of—

(i) The Vice-Chancellor.

(ii) The Pro-Vice-Chancellor.

(iii) Two members to be elected by the Court.

(iv) Two members to be elected by the Council.

(v) Two members to be elected by the Senate.

(vi) Two members to be elected by the Syndicate.

(2) The elected members shall hold office for the term of two years. One member from each electing body, to be determined by ballot, shall retire at the end of the first year.

(3) The Vice-Chancellor shall preside at the meetings of this Board or, in his absence, the Pro-Vice-Chancellor.

(4) The meetings of the Board shall be convened by the Vice-Chancellor or Pro-Vice-Chancellor, or, when so directed by the Syndicate, by the Registrar.

(5) The Board shall consider and submit recommendations as to all appointments referred to it.

Acts
during
vacancies.

28. No Act or Resolution of the Court, the Council, the Senate, the Syndicate or the Faculties or any other authority shall be invalid by reason only of any vacancy in the body doing or passing it, or by reason of any want

1916 : Act VII.]

Medical Degrees

of qualification by, or invalidity in, the election or appointment of any *de facto* member of the body, whether present or absent

29. Where, by the Statutes or Regulations, no provision is made for a president or chairman to preside over a meeting of any University authority, Board or Committee, or when the president or chairman so provided for is absent the members present shall elect one of their number to preside at the meeting

Elected chairman to preside where no provision made by the Statute

30. Every officer of the University and every member of any University authority, whose term of office or of membership has expired, shall be eligible for re appointment or re election, as the case may be

Re appointment and re election

31. Any member of the Court, the Council, the Senate or the Syndicate or any other University authority may resign by letter addressed to the Secretary in the case of the Court, and to the Registrar in all other cases

Resignation

32. A member of the Court or the Senate may be removed from office on conviction by a Court of law of what, in the opinion of the Court or the Senate, as the case may be, is a serious offence involving moral delinquency

Removal

Provided that a Resolution for the removal of any such member is approved by not less than two thirds of the members present at the meeting of the Court or the Senate, as the case may be, at which such a Resolution is proposed

And provided further that such a Resolution is confirmed by a like majority at a subsequent meeting of the Court or Senate, as the case may be

THE INDIAN MEDICAL DEGREES ACT, 1916.

ACT No VII OF 1916¹

[16th March, 1916]

An Act to regulate the grant of titles implying qualifications in Western medical science, and the assumption and use by unqualified persons of such titles

WHEREAS it is expedient to regulate the grant of titles implying qualifications in Western medical science, and the assumption and use by unqualified persons of such titles, It is hereby enacted as follows —

1. This Act may be called the Indian Medical Degrees Act, 1916.

Short title.

¹ For Statement of Objects and Reasons, see Gazette of India, 1915, Pt. V, p. 70, for Report of Select Committee, see *ibid*, 1916, Pt. V, p. 7, and for Proceedings in Council, see *ibid*, 1915, Pt. VI, p. 400, and *ibid*, 1916, Pt. VI, pp. 5 and 203

Definition.

2. In this Act, "Western medical science" means the Western methods of Allopathic medicine, Obstetrics and Surgery, but does not include the Homœopathic or Ayurvedic or Unani system of medicine.

Right to confer degrees, etc.

3. The right of conferring, granting, or issuing in British India degrees, diplomas, licences, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise Western medical science, shall be exercisable only by the authorities specified in the Schedule, and by such other authority as the ¹[Provincial Government] may, by notification² in the ³[Official Gazette], and subject to such conditions and restrictions as ⁴[it] thinks fit to impose, authorise in this behalf.

Prohibition of unauthorised conferment of degrees, etc.

4. Save as provided by section 3, no person in British India shall confer, grant, or issue, or hold himself out as entitled to confer, grant, or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise Western medical science.

Contravention of section 4.

5. Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to one thousand rupees; and, if the person so contravening is an association, every member of such association who knowingly and wilfully authorises or permits the contravention, shall be punishable with fine which may extend to five hundred rupees.

Penalty for falsely assuming or using medical titles.

6. Whoever voluntarily and falsely assumes, or uses any title or description or any addition to his name implying that he holds a degree, diploma, licence or certificate conferred, granted or issued by any authority referred to in section 3, or recognized by the General Council of Medical Education of the United Kingdom, or that he is qualified to practise Western medical science, shall be punishable with fine which may extend to two hundred and fifty rupees, or, if he subsequently commits, and is convicted of, an offence punishable under this section, with fine which may extend to five hundred rupees:

Provided that nothing in this section shall apply to the use by any person of any title, description, or addition which, prior to the commencement of this Act, he used in virtue of any degree, diploma, licence or certificate conferred upon, or granted or issued to him.

Cognizance of offences.

7. No Court shall take cognizance of an offence punishable under this Act except upon complaint made by order of the ⁵[Provincial Government], or upon complaint made, with the previous sanction of the ⁵[Provincial Government], by a Council of Medical Registration established by any enactment for the time being in force in the province.

Jurisdiction of Magistrates.

8. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

¹ Subs. by the A. O. for "G. G. in C."

² For notifications authorising certain institutions in the various provinces to grant certificates, diplomas, degrees, etc., see Gen. R. and O., Vol. IV, pp. 513-515.

³ Subs. by the A. O. for "Gazette of India".

⁴ Subs. by the A. O. for "he".

⁵ Subs. by the A. O. for "L. G."

1916 : Act VII.]

1916 : Act XV.]

Medical Degrees
Hindu Disposition of Property

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SCHEDULE

(See section 3)

- 1 Every University established by an ¹[Act of the Central Legislature]
- 2 The State Medical Faculty in Bengal
- 3 The College of Physicians and Surgeons of Bombay
- 4 The Board of Examiners Medical College Madras

THE HINDU DISPOSITION OF PROPERTY ACT, 1916

ACT No XI OF 1916 :

[25th September 1916]

An Act to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition

WHEREAS it is expedient to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition, It is hereby enacted as follows —

1. (1) This Act may be called the Hindu Disposition of Property Act. Short title
(2) It extends, in the first instance, to the whole of British India, except and extent, the province of Madras. Provided that the ²[Provincial Government] may by notification in the ³[Official Gazette], extend this Act to the province of Madras.

2. Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu whether by transfer *inter vivos* or by will for the benefit of persons not in existence shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition

3 The limitations and provisions referred to in section 2 shall be the limitations and provisions following, namely —

(a) in respect of dispositions by transfer *inter vivos*, those contained in ⁵[Chapter II] of the Transfer of Property Act, 1852, and

¹ Subs. by the A. O. for Act of the C. G. in C.
² For Statute out of Objects and Reasons see Gazette of India, 1916, Pt. I, p. 2 for report of Select Committee see ibid 1916, Pt. I, p. 6 and for Proceedings in Council, see ibid 1916, Pt. VI pp. 19, 209, 341 and 520.
³ Subs. by the A. O. for C. G. in C.
⁴ Subs. by the A. O. for Gazette of India.
⁵ Subs. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 12, for sections 13, 14 and 20.

(b) in respect of dispositions by will, those contained in ¹[sections 113, 114, 115 and 116 of the Indian Succession Act, 1925.] XXXI
1925.

4. [*Failure of prior disposition.*] Rep. by the *Transfer of Property (Amendment) Supplementary Act, 1929 (XXI of 1929)*, s. 12.

5. Where the ²[Provincial Government] is of opinion that the Khoja community in ³[the Province] or any part thereof desire that the provisions of this Act should be extended to such community, ⁴[it] may, by notification in the ⁵[Official Gazette], declare that the provisions of this Act, with the substitution of the word "Khojas" or "Khoja", as the case may be, for the word "Hindus" or "Hindu" wherever those words occur, shall apply to that community in such area as may be specified in the notification, and this Act shall thereupon have effect accordingly.

¹ Subs. by the *Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929)*, s. 12, for "sections 100 and 101 of the Indian Succession Act, 1865".

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "British India".

⁴ Subs. by the A. O. for "he".

⁵ Subs. by the A. O. for "Gazette of India".

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